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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206–AI28

Federal Employment Priority Consideration Program for Displaced Employees of the District of Columbia Department of Corrections

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement provisions of law affecting the priority consideration program for certain displaced employees of the District of Columbia Department of Corrections seeking Federal positions. These regulations also incorporate comments and suggestions received on the interim regulations OPM published on August 4, 1998.

DATES: This interim regulation is effective on January 22, 2001. Written comments will be considered if received no later than March 23, 2001.

ADDRESSES: Send or deliver written comments to: Carol J. Okin, Associate Director for Employment, Office of Personnel Management; Suite 6500, 1900 E Street NW., Washington, DC 20415–9000.

FOR FURTHER INFORMATION CONTACT: Jacqueline Yeatman on (202) 606–0960, FAX (202) 606–2329, TDD (202) 606–0023 or by email at jryeatma@opm.gov.

SUPPLEMENTARY INFORMATION:

Initial Public Law and Regulations

The National Capital Revitalization and Self-Government Improvement Act (part of the Balanced Budget Act of 1997, sec. 11201, Pub. L. 105–33, 111 Stat. 738, enacted August 5, 1997) mandated that the Lorton Correctional Complex be closed by December 31, 2001. Section 11203 of this law gave priority consideration to employees of the District of Columbia (DC) Department of Corrections (DOC) displaced by this closure. The law established two priority consideration programs—one for vacant Bureau of Prisons law enforcement positions (for employees meeting the qualification and suitability requirements for those positions), and another for most other Federal vacancies. The Department of Justice maintains the priority consideration program for displaced Department of Corrections employees interested in Federal Bureau of Prisons law enforcement positions.

On August 4, 1998, OPM issued interim regulations with request for comment to implement the Priority Consideration Program covering most vacancies in Federal agencies. Under the interim regulations, present and former DC DOC employees receiving a reduction in force (RIF) separation notice from the DC Government issued after August 7, 1997, were eligible for priority consideration when applying for certain vacant competitive service positions in Federal Executive Branch agencies (unless they had been appointed to a law enforcement position in the Department of Justice Bureau of Prisons). In order to receive this priority, the DC DOC employee had to apply and be found well-qualified. This priority consideration was similar to the program for Federal employees described in 5 CFR part 330, subpart G—Interagency Career Transition Assistance Plan (ICTAP) for Displaced Employees. The law provided that this program would expire one year after closure of the Lorton correctional complex.

Second Public Law

After we published the interim regulations, President Clinton signed the District of Columbia Courts and Justice Technical Corrections Act of 1998 (Pub. L. 105–274) on October 21, 1998. This law contained several major changes affecting the Priority Consideration Program covering most Federal vacancies. One significant change was elimination of the requirement that DC Corrections employees be ''well-qualified'' to get priority. The other major change in the law was the establishment of a competitive service appointing authority for DC DOC appointees hired through this program.

As a result of this second statute, agencies *must:* (1) Make all new appointments under this program into the competitive service; and (2) retroactively convert/correct appointments of those already hired into competitive service appointments. Because of these significant statutory changes, we have modified these regulations and are reissuing them in interim form with request for comments. This will allow for timely implementation while giving users the opportunity to submit any concerns or questions they may have about the revised regulations.

Comments Received on Initial Regulations Issued

After OPM published the initial regulations in August, 1998, we received comments from three Federal agencies. Two agencies noted the issue of the order of selection as it applies to this program. The interim regulations stated, in § 330.1103(d), that the priority and order of selection for this program are similar to ICTAP (the order of selection and exceptions to ICTAP appear in § 330.705). The commenting agencies believed the exceptions to this program, and the relationship to ICTAP priority, needed clarification. We have therefore attempted to clarify this issue in § 330.1103 of these regulations. In addition, the current ICTAP regulations, issued on July 27, 1999, include a cross-reference in § 330.705 that specifically mentions the DC DOC program.

Two agencies asked about the relationship between meeting the requirements for a Federal Bureau of Prisons (BOP) law enforcement position and this program. These agencies would prefer that OPM restrict DC DOC employees to priority under only one program at a time. However, the second public law includes a specific provision making DC DOC employees not yet ''appointed to a Federal Bureau of Prisons law enforcement position'' eligible for this program. A DC DOC employee would meet this definition up until actual appointment to a BOP law enforcement position. Therefore, we have revised § 330.1101 accordingly, and eliminated paragraph (b) of § 330.1103.

Another agency asked whether an employee receiving a *time-limited* appointment to a BOP law enforcement position would lose the right to priority under this program. We believe that Congress intended to assist displaced DC DOC employees in securing *permanent* employment, either in a BOP law enforcement position or in another Federal position. Therefore, we are modifying § 330.1101 to make a DC DOC employee eligible for selection priority under this program until appointed to a *permanent* BOP law enforcement position. This means that a former DC DOC employee could accept a time-limited law enforcement position with the Bureau of Prisons, while still exercising the right to selection priority under these regulations for other Federal employment.

One agency objected to the fact that employees under this program receive priority for vacancies nationwide, and potentially for more than one year, while priority under ICTAP is limited to a single commuting area and to one year. Several agencies were concerned that they might be required to pay employee relocation costs, even in cases where they lack the resources to do so. The statute for this program, however, is broad, and precludes us from limiting the area of consideration or the length of eligibility. Therefore, we have not changed these provisions in this regulation. However, we did find that some of the references to the program termination date in the initial regulation did not precisely match the language in the law. Therefore, we have modified references to the program termination date in sections 330.1102 and 330.1106 to better reflect the statutory language. Since the current statute requires DC to close the Lorton Correctional Complex by December 31, 2001, we expect this program to expire on December 31, 2002, at the latest.

Two agencies raised additional questions, including: (1) Will OPM impose any additional requirements for agency reports or vacancy announcements? (2) are competitive service vacancies lasting 120 days or less covered by this program? (3) are there any grade-level requirements? (4) are DC DOC employees required to submit a current performance appraisal? (5) if an employee declines a permanent offer under this program, will they lose their eligibility? and (6) does this program require a second review of applicants when they are found ineligible for priority?

OPM considered imposing additional requirements for announcements or agency reporting for this program, but decided against it. The current regulations under section 330.102 require agencies to notify OPM of competitive service vacancies lasting 121 days or more. Therefore, we have added a similar definition of a ''vacancy'' to these regulations. As for the grade level requirements, differences in the DC Government employment system make it impractical to impose grade level and performance appraisal requirements for applicants under this program. We believe the requirement to be ''qualified'' will screen out candidates with insufficient experience. We do, however, agree with the commenters that we need to address what happens when a candidate declines a job offer; such a provision already exists under ICTAP. Therefore, we are adding language (mirroring the ICTAP) allowing agencies to terminate their future consideration of a candidate under this program if he/she declines, or fails to respond to, a firm offer. We also agree that it is important to have a second review when an applicant initially fails to meet the program requirements. Therefore, we have added this provision to these regulations.

Other Issues Addressed

While we were developing these regulations, two agencies asked us to address some additional questions: (1) Are DC DOC employees entitled to priority under these regulations for *non-law enforcement* jobs in the Bureau of Prisons? and (2) Is the DC DOC employee required to submit proof of their eligibility for priority like ICTAP candidates? We clarified these issues by: (1) Adding language based on the original law to the definition of vacancy in § 330.1103 to clarify which Bureau of Prisons positions are covered; and (2) adding language to § 330.1104(a)(3) requiring applicants to provide proof of their eligibility under this subpart.

One additional issue surfaced during the development of this regulation. A number of DC DOC managers and supervisors were moved into positions in the newly created Management Supervisory Service (MSS), making them, in effect, at-will employees. As a result, these employees would be separated by non-RIF termination procedures under the Lorton closure. We consulted with DC Government to find the best way to clarify the continuing eligibility of these employees for this priority consideration program, and modified section 330.1104 accordingly.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits provided by law. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in the effective date and make this amendment effective in less than 30 days. The delay in the effective date is being waived to give effect to the benefits extended by the amended provisions at the earliest practicable date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

Executive Order 12866, Regulatory Review

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

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 330 of title 5, Code of Federal Regulations, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart G also issued under 5 U.S.C. 8337(h) and 8457(b); subpart K also issued under sec. 11203 of Pub. Law 105–33 (111 Stat. 738) and Pub. Law 105–274 (112 Stat. 2424); subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

2. Section 330.1101 is revised to read as follows:

§ 330.1101 Purpose.

A displaced employee of the District of Columbia (DC) Department of Corrections (DOC) who is separated from his/her position as a result of the closure of the Lorton Correctional Complex, and who has not been appointed to a permanent Federal Bureau of Prisons law enforcement position, is entitled to priority consideration for other Federal vacancies when he/she applies and is found qualified.

3. Section 330.1102 is revised to read as follows:

§ 330.1102 Duration.

This program terminates 1 year after the closing of the Lorton Correctional Complex.

4. Paragraph (b) of § 330.1103 is removed and paragraphs (c), (d) and (e) are redesignated as paragraphs (b), (c) and (d) and revised to read as follows:

§ 330.1103 Definitions.

* * * * *

(b) *Vacancy* means any competitive service position, including non-law enforcement positions in the Federal Bureau of Prisons, to be filled for a total of 121 days or more, including all extensions, regardless of whether the agency issues a specific vacancy announcement. This program does not apply to law enforcement positions covered by the Federal Bureau of Prisons Priority Consideration Program.

(c) *Priority consideration* means that a displaced DC DOC employee eligible under this subpart who applies for a vacancy and is determined to be qualified, is accorded similar priority and order of selection as an eligible current or former displaced Federal employee under 5 CFR part 330, subpart G—Interagency Career Transition Assistance for Displaced Employees. Actions which are exempt from the requirements of 5 CFR part 330 subpart G will also be exempt from the requirements of this subpart. Agencies must follow the order of selection in § 330.705(a) in filling vacancies in the Federal Government with candidates from outside their own workforce. DC DOC employees are eligible for this priority consideration without regard to any geographical restrictions.

(d) *Qualified* means an eligible employee who:

(1) Possesses the knowledge, skills, and abilities which meet the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, citizenship, minimum educational and experience requirements, and any applicable selective factors;

(2) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(3) Meets any special qualifying condition(s) that OPM has approved for the position; and

(4) Is able to satisfactorily perform the duties of the position upon entry.

5. In § 330.1104, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (b), (c)(2), (c)(4) and (c)(5) are revised, and a new paragraph (c)(6) is added to read as follows:

§ 330.1104 Eligibility.

(a)* * *

(1) Be in receipt of a RIF separation notice, or a similar notice of non-disciplinary termination from the Management Supervisory Service, issued by the DC Department of Corrections in connection with the closure of the Lorton Correctional Complex.

(2) Have not been appointed to a permanent Federal Bureau of Prisons law enforcement position;

(3) Apply for a vacancy within the time frames established by the agency, and include proof of eligibility;

(4) Be found qualified for the specific vacancy.

(b) *Eligibility for priority consideration begins:* on the date the DC DOC employee receives or is issued a specific RIF separation notice, or a similar notice of non-disciplinary termination from the Management Supervisory Service (MSS), issued by the DC DOC due to the closure of the Lorton Correctional Complex.

(c) * * *

(2) When the DC DOC employee is no longer being separated by RIF, or by similar non-disciplinary termination from the Management Supervisory Service, due to the closure of the Lorton Correctional Complex;

* * *

(4) When the DC DOC employee voluntarily separates by resignation or retirement prior to the RIF effective date or the non-disciplinary MSS termination date;

(5) When the DC DOC employee is separated by a non-RIF involuntary separation or disciplinary or other MSS termination not related to the closure of the Lorton correctional complex; or

(6) Eligibility within a specific agency may terminate if the employee:

(i) Declines a permanent appointment offered by the agency (whether competitive or excepted) when the employee applied and was found qualified; or

(ii) Fails to respond within a reasonable period of time to an offer or official inquiry of availability from the agency.

6. Section 330.1105 is revised to read as follows:

§ 330.1105 Selection.

(a) If two or more individuals eligible for priority under subpart G of this part (the Interagency Career Transition Assistance Plan), under subpart K of this part (Federal Employment Priority Consideration for Displaced Employees of the District of Columbia Department of Corrections), and/or under subpart L of this part (Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees) apply for a vacancy and are eligible for priority, the agency has the discretion to select any of the individuals.

(b) Agencies will conduct a documented, independent second review whenever an otherwise eligible employee fails to meet the ''qualified'' requirement. The applicant must be advised in writing of the results of the second review.

7. The heading and paragraphs (a) and (b) of § 330.1106 are revised to read as follows:

§ 330.1106 Appointment.

(a)(1) Selectees under this subpart receive noncompetitive appointments to the competitive service under the authority of Public Law 105–274, enacted October 21, 1998.

(2) Agencies must retroactively and noncompetitively convert or correct any excepted appointments made under section 11203(b) of Public Law 105–33 to competitive service appointments under Public Law 105–274. For employees appointed before October 21, 1998, the conversion will be effective on October 21, 1998. For employees appointed on or after October 21, 1998, agencies must correct the record to reflect competitive service appointment as of the original appointment date.

(b) Eligibility for appointment under this subpart expires 1 year after the closing of the Lorton Correctional Complex.

[FR Doc. 01–1487 Filed 1–19–01; 8:45 am]
BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–110–1]

West Indian Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are quarantining part of Cameron County, TX, because of the West Indian fruit fly and restricting the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the West Indian fruit fly to noninfested areas of the United States.

DATES: This interim rule was effective January 12, 2001. We invite you to comment on this docket. We will consider all comments that we receive by March 23, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–110–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–110–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Spaide, Assistant Director, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

We are amending the ''Domestic Quarantine Notices'' in 7 CFR part 301 by adding a new subpart, ''West Indian Fruit Fly'' (§§ 301.98 through 301.98–10, referred to below as the regulations). The regulations quarantine part of Cameron County, TX, because of the West Indian fruit fly and restrict the interstate movement of regulated articles from the quarantined area.

The West Indian fruit fly, *Anastrepha obliqua* (Macquart), is a very destructive pest of fruits and vegetables, including carambola, grapefruit, guava, limes, mangoes, oranges, passion fruit, peaches, and pears. This pest can cause serious economic losses by lowering the yield and quality of these fruits and vegetables and, in some cases, by damaging seedlings and young plants. Heavy infestations can result in complete loss of these crops.

Recent trapping surveys near Rio Hondo, TX, have established that part of Cameron County is infested with the West Indian fruit fly.

Officials of the Animal and Plant Health Inspection Service (APHIS) and State and county agencies in Texas have begun an intensive survey and eradication program in the infested area. Also, as explained below, Texas has restricted the intrastate movement of certain articles from the infested area to prevent the spread of the West Indian fruit fly within Texas. However, Federal regulations are necessary to restrict the interstate movement of certain articles from the infested area to prevent the spread of the West Indian fruit fly to noninfested areas of the United States. This interim rule establishes those Federal regulations, which are described below.

Section 301.98—Restrictions on Interstate Movement of Regulated Articles

Section 301.98 prohibits the interstate movement of regulated articles from quarantined areas except in accordance with the regulations.

Section 301.98–1—Definitions

Section 301.98–1 contains definitions of the following terms: *Administrator, Animal and Plant Health Inspection Service, certificate, compliance agreement, core area, day degrees, Departmental permit, dripline, infestation, inspector, interstate, limited permit, moved (move, movement), person, Plant Protection and Quarantine, quarantined area, regulated articles, State,* and *West Indian fruit fly.*

Section 301.98–2—Regulated Articles

Certain articles present a significant risk of spreading the West Indian fruit fly if they are moved from quarantined areas without restrictions. We call these articles regulated articles. Paragraphs (a) through (e) of § 301.98–2 list the following as regulated articles:

- The West Indian fruit fly;
- Certain fruits and vegetables (fruits or vegetables that are canned or dried or that are frozen below −17.8 °C (0 °F) are exempted, since the West Indian fruit fly cannot survive such processing);
- Soil within the dripline of plants that produce those fruits or vegetables; and
- Any other product, article, or means of conveyance that an inspector determines to present a risk of spreading the West Indian fruit fly when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions in the regulations.

The last item listed above, which provides for the designation of ''any other product, article, or means of conveyance'' as a regulated article, is intended to address the risks presented by, for example, a truck with West Indian fruit fly pupae in the cracks of its floorboards, thus enabling an inspector to designate that truck as a regulated article in order to ensure that any necessary risk-mitigating measures are carried out.

Section 301.98–3—Quarantined Areas

Paragraph (a) of § 301.98–3 provides the criteria for the inclusion of States, or portions of States, in the list of quarantined areas. Under these criteria, any State or portion of a State in which the West Indian fruit fly is found by an inspector, or in which the Administrator has reason to believe that the West Indian fruit fly is present, will be listed as a quarantined area. These criteria also provide that an area will be designated as a quarantined area when the Administrator considers it necessary due to the area's inseparability for quarantine enforcement purposes from localities in which the West Indian fruit fly has been found.

Paragraph (a) of § 301.98–3 also provides that we will designate less than an entire State as a quarantined area only if we determine that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and that the designation of less than the entire State as a quarantined area will prevent the interstate spread of the West Indian fruit fly. These determinations would indicate that infestations are confined to the quarantined areas and eliminate the need for designating an entire State as a quarantined area.

The boundary lines that delimit the portion of a State that is designated as a quarantined area are set up approximately 4.5 miles from the locations where West Indian fruit fly has been detected. The 4.5 mile radius distance for regulated areas from the trapping sites for West Indian fruit fly is based upon several factors, including: Previous experience with fruit fly eradication programs, estimated efficacy of trapping grids, available data on natural dispersal, and recommendations from fruit fly experts familiar with the biology and behavior of the West Indian fruit fly. The boundary lines may vary due to factors such as the location of West Indian fruit fly host material, the location of transportation centers such as bus stations and airports, the pattern of persons moving in that State, the number and patterns of distribution of the West Indian fruit fly, and the use of clearly identifiable lines for the boundaries.

We have determined that it is not necessary to designate the entire State of Texas as a quarantined area. The West Indian fruit fly has not been found in any area of the State other than a portion of Cameron County, and Texas has adopted and is enforcing restrictions on the intrastate movement of regulated articles from that area that are substantially the same as those we are imposing on the interstate movement of regulated articles. Therefore, in accordance with the criteria described in the previous paragraph, we have designated part of the Rio Hondo area of Cameron County, TX, as a quarantined area. The boundaries of the quarantined area are described in § 301.98–3(c) in the rule portion of this document.

Paragraph (b) of § 301.98–3 provides that we may temporarily designate any nonquarantined area in a State as a quarantined area when we determine that the nonquarantined area meets the criteria for designation as a quarantined area described in § 301.98–3(a). In such cases, we will give the owner or person in possession of the area a copy of the regulations along with written notice of the area's temporary designation as a quarantined area, after which time the interstate movement of any regulated article from the area will be subject to the regulations. This provision is necessary to prevent the spread of the West Indian fruit fly during the time between the detection of the pest and the time a document quarantining the area can be made effective and published in the **Federal Register**. In the event that an area's designation as a temporary quarantined area is terminated, we will provide written notice of that termination to the owner or person in possession of the area as soon as is practicable.

Section 301.98–4—Conditions Governing the Interstate Movement of Regulated Articles from Quarantined Areas

This section requires most regulated articles moving interstate from quarantined areas to be accompanied by a certificate or a limited permit. APHIS or the U.S. Department of Agriculture (the Department) may move regulated articles interstate without a certificate or limited permit if the articles are moved for experimental or scientific purposes. However, the articles must be moved in accordance with a Departmental permit issued by the Administrator, under conditions specified on the permit to prevent the spread of the West Indian fruit fly.

Except for articles moved by APHIS or the Department, only articles that are moved into the quarantined area from outside the quarantined area and that are accompanied by a waybill that indicates the point of origin may be moved interstate from the quarantined area without a certificate or limited permit. Additionally, the articles must be moved in an enclosed vehicle or be completely enclosed so as to prevent access by West Indian fruit flies. The regulated articles must also be moved through the quarantined area without stopping (except for refueling, rest stops, emergency repairs, and for traffic conditions such as traffic lights and stop signs), and the regulated articles must not be unpacked or unloaded in the quarantined area.

Section 301.98–5—Issuance and Cancellation of Certificates and Limited Permits

Under Federal domestic plant quarantine programs, there is a difference between the use of certificates and limited permits. Certificates are issued for regulated articles when an inspector finds that, because of certain conditions (e.g., the article is free of West Indian fruit fly), there is no pest risk before movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions. Limited permits are issued for regulated articles when an inspector finds that, because of a possible pest risk, the articles may be safely moved interstate only subject to further restrictions, such as movement to limited areas and movement for limited purposes. Section 301.98–5 explains the conditions for issuing a certificate or limited permit.

Specifically, § 301.98–5(a) provides that a certificate will be issued by an inspector for the movement of a regulated article if the inspector determines that the article: (1) Is free of the West Indian fruit fly; has been treated in the presence of an inspector in accordance with § 301.98–10; or comes from a premises of origin that is free of the West Indian fruit fly; (2) will be moved in compliance with any additional emergency conditions deemed necessary to prevent the spread of the West Indian fruit fly under section 414 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 444, 7 U.S.C. 7714); and (3) is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to that article.

We have included a footnote (number 4) that provides an address for securing the addresses and telephone numbers of the local Plant Protection and Quarantine offices at which services of inspectors may be requested. We have also included a footnote (number 5) that explains that the Secretary of Agriculture can, under the Plant Protection Act, take emergency actions to seize, quarantine, treat, destroy, or apply other remedial measures to articles that are, or that he or she has reason to believe are, infested or infected by or contain plant pests.

Paragraph (b) of § 301.98–5 provides for the issuance of a limited permit (in lieu of a certificate) by an inspector for interstate movement of a regulated article if the inspector determines that the article is to be moved to a specified destination for specified handling, utilization or processing, and that the movement will not result in the spread of the West Indian fruit fly.

Paragraph (c) of § 301.98–5 allows any person who has entered into and is operating under a compliance agreement to issue a certificate or limited permit for the interstate movement of a regulated article after an inspector has determined that the article is eligible for a certificate or limited permit under § 301.98–5(a) or (b).

Also, § 301.98–5(d) contains provisions for the withdrawal of a certificate or limited permit by an inspector if the inspector determines that the holder of the certificate or limited permit has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact in the event that the person wishes to appeal the cancellation.

Section 301.98–6—Compliance Agreements and Cancellation

Section 301.98–6 provides for the issuance and cancellation of compliance agreements. Compliance agreements are provided for the convenience of persons who are involved in interstate shipments of regulated articles from quarantined areas. A compliance agreement will be issued when an inspector has determined that the person requesting the compliance agreement is knowledgeable regarding the requirements of the regulations and the person has agreed to comply with those requirements. This section contains a footnote (number 7) that explains how compliance agreements may be arranged.

Section 301.98–6 also provides that an inspector may cancel the compliance agreement upon finding that a person who has entered into the agreement has failed to comply with any of the provisions of the regulations. The inspector will notify the holder of the compliance agreement of the reasons for

cancellation and offer an opportunity for a hearing to resolve any conflicts of material fact in the event that the person wishes to appeal the cancellation.

Section 301.98–7—Assembly and Inspection of Regulated Articles

Section 301.98–7 provides that any person (other than a person authorized to issue certificates or limited permits under § 301.98–5(c)) who desires a certificate or limited permit to move regulated articles must request, at least 48 hours before the desired interstate movement, that an inspector issue a certificate or limited permit. The regulated articles must be assembled in a place and manner directed by the inspector.

Section 301.98–8—Attachment and Disposition of Certificates and Limited Permits

Section 301.98–8 requires the certificate or limited permit issued for movement of the regulated article to be attached, during the interstate movement, to the regulated article, or to a container carrying the regulated article, or to the accompanying waybill. Further, the section requires that the carrier must furnish the certificate or limited permit to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

These provisions are necessary for enforcement purposes and to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.98–9—Costs and Charges

Section 301.98–9 explains the APHIS policy that the services of an inspector that are needed to comply with the regulations are provided without cost between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, to persons requiring those services, but that we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted at times other than between 8 a.m. to 4:30 p.m., Monday through Friday, except holidays).

Section 301.98–10—Treatments

Section 301.98–10 lists treatments that qualify soil and regulated articles for interstate movement with a certificate as provided in § 301.98–5.

Paragraph (a) provides that fruits and vegetables originating inside the quarantined area that are to be moved outside the quarantined area must be treated with an applicable treatment listed in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at 7 CFR 300.1, ''Materials incorporated by reference.''

Paragraph (b) provides that soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.98–2(a) of this subpart may be treated with diazinon at the rate of 5 pounds active ingredient per acre with sufficient water to wet the soil to a depth of at least ½ inch. Research by the Agricultural Research Service has determined that this diazinon treatment would destroy the West Indian fruit fly in soil.

Paragraph (c) provides that premises that are located within the regulated area but outside the infested core area, and that produce regulated articles, may receive regular treatments with malathion or spinosad bait spray. These treatments must take place at 6-to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the West Indian fruit fly. Determination of the time period must be based on the day degrees model for West Indian fruit fly. Since the length of fruit fly life cycles vary according to the temperature of their environment, the day degrees model is used to project the duration of the life cycle of the fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. Spinosad bait spray must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications of Spinosad, the mixture may be diluted with water to improve coverage. After the treatment cycle is complete, regulated articles produced on the premises will be eligible for interstate movement with a certificate as provided in § 301.98–5.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the West Indian fruit fly from spreading to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

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

This rule quarantines part of Cameron County, TX, because of the West Indian fruit fly and restricts the interstate movement of regulated articles from the quarantined area. This action is necessary on an emergency basis to prevent the spread of the West Indian fruit fly to noninfested areas of the United States.

Within the regulated area there are approximately 22 small entities that may be affected by this rule. These include 5 fruit sellers and 17 growers. These 22 entities comprise less than 1 percent of the total number of similar entities operating in the State of Texas. Additionally, these small entities sell regulated articles primarily for local intrastate—not interstate—movement, so the effect, if any, of this rule on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate from the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not

require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the West Indian Fruit Fly Cooperative Eradication Program. The assessment provides a basis for the conclusion that the implementation of this interim rule will not have a significant impact on human health and the natural environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0170 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503, and (2) Docket No. 00–110–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 00–110–1 and send your comments within 60 days of publication of this rule.

This interim rule quarantines a part of Cameron, TX, because of the West Indian fruit fly and restricts the interstate movement of regulated articles from the quarantined area. Its implementation will require us to engage in certain information collection activities, in that certain articles may not be moved interstate from the quarantined area unless they are accompanied by a certificate or a limited permit. A certificate or limited permit may be issued by an inspector (*i.e.,* an APHIS employee or other person authorized by the APHIS Administrator to enforce the regulations) or by a person who has entered into a written compliance agreement with APHIS. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

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

Respondents: State and county cooperators (inspectors); and producers, handlers, and movers of regulated fruit and vegetables in Cameron County, TX.

Estimated annual number of respondents: 37.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 37.

Estimated total annual burden on respondents: 37 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 166; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293, and Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Part 301 is amended by adding a new ''Subpart—West Indian Fruit Fly,'' §§ 301.98 through 301.98–10, to read as follows:

Subpart—West Indian Fruit Fly

Sec.

301.98 Restrictions on interstate movement of regulated articles.
301.98–1 Definitions.
301.98–2 Regulated articles.
301.98–3 Quarantined areas.
301.98–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
301.98–5 Issuance and cancellation of certificates and limited permits.
301.98–6 Compliance agreements and cancellation.
301.98–7 Assembly and inspection of regulated articles.
301.98–8 Attachment and disposition of certificates and limited permits.
301.98–9 Costs and charges.
301.98–10 Treatments.

Subpart—West Indian Fruit Fly

§ 301.98 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.[1]

§ 301.98–1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 444, 7 U.S.C. 7714).

Certificate. A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of West Indian fruit fly and may be moved interstate to any destination.

Compliance agreement. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

Core area. The 1-square-mile area surrounding each property where West Indian fruit fly has been detected.

Day degrees. A mathematical construct combining average temperature over time that is used to calculate the length of a West Indian fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F: (Minimum Daily Temp+ Maximum Daily Temp)/2) − 54°=Day Degrees.

Departmental permit. A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.98–4(c) of this subpart.

Dripline. The line around the canopy of a plant.

Infestation. The presence of the West Indian fruit fly or the existence of circumstances that makes it reasonable to believe that the West Indian fruit fly is present.

Inspector. Any employee of the APHIS, U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties required under this subpart.

Interstate. From any State into or through any other State.

Limited permit. A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.98–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

Moved (move, movement). Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

Plant Protection and Quarantine. Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any State, or any portion of a State, listed in § 301.98–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.98–3(b) of this subpart.

Regulated article. Any article listed in § 301.98–2 or otherwise designated as a regulated article in accordance with § 301.98–2(d).

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

West Indian fruit fly. The insect known as the West Indian fruit fly, *Anastrepha obliqua* (Macquart), in any stage of development.

§ 301.98–2 Regulated articles.

The following are regulated articles:

(a) West Indian fruit flies.[2]

(b)(1) The following fruits and vegetables:

Barbados cherry (*Malpighia glabra*)
Carambola (*Averrhoa carambola*)
Grapefruit (*Citrus paradisi*)
Granadilla, giant (*Passiflora quadrangularis*)
Guava (*Psidium guajava*)
Guava, strawberry (*Psidium littorale*)
Hog-plum (*Spondias mombin*)
Japanese plum (*Prunus salicina*)
Jew plum (*Spondias cytherea*)
Ketembilla (*Dovyalis hebecarpa*)
Lime, sweet (*Citrus aurantifolia*)
Loquat (*Eriobotrya japonica*)
Malay-apple (*Syzygium malaccense*)
Mango (*Mangifera indica*)
Orange, sour (*Citrus aurantium*)
Orange, sweet (*Citrus sinensis*)
Passion fruit (*Passiflora edulis*)
Peach (*Prunus persica*)
Pear (*Pyrus communis*)
Ramón (*Brosimum alicastrum*)
Red mombin (*Spondias purpurea*)
Rose-apple (*Syzygium jambos*)
Sapodilla (*Manilkara zapota*)
Sapote (*Diospyros* spp.)

(2) Any fruits or vegetables that are canned or dried or frozen below −17.8 °C. (0 °F.) are not regulated articles.

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a) through (c) of this section that an inspector determines presents a risk of spreading the West Indian fruit fly, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

[2] Permit and other requirements for the interstate movement of West Indian fruit flies are contained in part 330 of this chapter.

§ 301.98–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the West Indian fruit fly has been found by an inspector, in which the Administrator has reason to believe that the West Indian fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the West Indian fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the West Indian fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

Texas

Cameron County. That portion of Cameron County bounded by a line drawn as follows: Beginning at the intersection of FM 106 and Robertson Road; then north on Robertson Road to Fernando Road; then east on Fernando Road to Alexander Road; then north on Alexander Road to Taubert Road; then east on Taubert Road to FM 2925; then north on FM 2925 to Johnson Road; then east on Johnson Road to North Olimeto

Road; then east along an imaginary line to FM 1847; then south on FM 1847 to FM 510; then west on FM 510 to Casey Road; then north on Casey Road to Bean Road; then west on Bean Road to FM 345; then north on FM 345 to Glenview Road; then west on Glenview Road to Robertson Road; then north on Robertson Road to the point of beginning.

§ 301.98–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area [3] only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.98–5 and 301.98–8 of this subpart;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by West Indian fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of the West Indian fruit fly; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579–0170)

[3] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

§ 301.98–5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector [4] for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.98–10 of this subpart; or

(ii) Based on inspection of the premises of origin, the premises are free from the West Indian fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of West Indian fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the West Indian fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 444, 7 U.S.C. 7714) [5] to prevent the spread of the West Indian fruit fly; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector [6] will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the West Indian fruit fly because life stages of the West Indian fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 444, 7 U.S.C. 7714) to prevent the spread of the West Indian fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579–0170)

[4] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directors. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737–1236, or the APHIS web site at http://www.aphis.usda.gov/travel/aqui.html.

[5] Section 414 of the Plant Protectin Act (Title IV, Pub. L. 106–224, 114 Stat. 444, 7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

[6] See footnote 4 to § 301.98–5(a).

§ 301.98–6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.[7]

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

§ 301.98–7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.98–5(c)) who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector[8] as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

§ 301.98–8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579–0170)

§ 301.98–9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

§ 301.98–10 Treatments.

Treatment schedules listed in the Plant Protection and Quarantine Treatment Manual to destroy the West Indian fruit fly are authorized for use on regulated articles. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, ''Materials incorporated by reference.'' The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.98–2(a) of this subpart.* Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of ½ inch.

(b) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating fruits and vegetables as provided in the Plant Protection and Quarantine Treatment Manual. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for development of West Indian fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for West Indian fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

Done in Washington, DC, this 12th day of January 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–1618 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–34–P

[7] Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737–1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

[8] See footnote 4 to § 301.98–5(a).

DEPARTMENT OF JUSTICE

8 CFR Parts 3, 212, and 240

[EOIR No. 127P; AG Order No. 2358–2001]

RIN 1125–AA29

Executive Office for Immigration Review; Section 212(c) Relief for Certain Aliens in Deportation Proceedings Before April 24, 1996

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule creates a uniform procedure for applying the law as enacted by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). This rule allows certain aliens in deportation proceedings that commenced before April 24, 1996, to apply for relief pursuant to section 212(c) of the Immigration and Nationality Act (INA). In addition, this rule makes several technical amendments to an earlier regulation relating to the streamlining authority of the Board of Immigration Appeals.

EFFECTIVE DATE: This final rule is effective January 22, 2001.

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SUPPLEMENTARY INFORMATION:

Why Is the Department Issuing This Final Rule?

Before the comprehensive revision of the INA by the Illegal Immigration

Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, 110 Stat. 3009, section 212(c) of the INA, provided that aliens who were lawfully admitted for permanent residence, who temporarily proceeded abroad voluntarily and not under an order of deportation, and who were returning to a lawful unrelinquished domicile in the United States of seven consecutive years, could be admitted to the United States in the discretion of the Attorney General. 8 U.S.C. 1182(c) (1994). Although section 212(c) by its terms applied only to aliens in exclusion proceedings (*i.e.,* aliens seeking to enter at the border), it had been construed for many years also to allow aliens who were placed in deportation proceedings in the United States to apply for discretionary relief from deportation. *See Matter of Silva,* 16 I. & N. Dec. 26, 29–30 (BIA 1976); *Gonzalez* v. *INS,* 996 F.2d 804, 806 (6th Cir. 1993); *Ashby* v. *INS,* 961 F.2d 555, 557 & n.2 (5th Cir. 1992); *Tapica-Acuna* v. *INS,* 640 F.2d 223, 225 (9th Cir. 1981); *Francis* v. *INS,* 532 F.2d 268, 273 (2d Cir. 1976).

In the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104–132, 110 Stat. 1214, Congress significantly restricted the availability of discretionary relief from deportation under section 212(c). Section 440(d) of AEDPA amended section 212(c) of the INA to provide that section 212(c) ''shall not apply to an alien who is deportable by reason of having committed any criminal offense covered by section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 241(a)(2)(A)(i).'' AEDPA section 440(d), as amended by IIRIRA section 306(d). The effect of section 440(d) of AEDPA was to render ineligible for relief under INA section 212(c) aliens deportable because of convictions for certain criminal offenses, including aggravated felonies, controlled substance offenses, certain firearms offenses, espionage, and multiple crimes of moral turpitude.

AEDPA did not contain a provision expressly stating whether section 440(d) was to be applied to criminal aliens who applied for section 212(c) relief, were placed in deportation proceedings, were convicted, or committed the crimes rendering them deportable before AEDPA was enacted. In *Matter of Soriano,* Interim Decision 3289 (BIA 1996), the Board of Immigration Appeals (Board) held that section 440(d) of AEDPA did not apply to aliens who had applied for section 212(c) relief before AEDPA was enacted, but did apply to all other aliens covered in the provision, including those whose proceedings commenced or whose criminal conduct or conviction occurred before AEDPA was enacted.

At the request of the Immigration and Naturalization Service (INS), the Attorney General vacated the Board's decision in *Soriano* and certified the question to herself. On February 21, 1997, the Attorney General concluded that section 440(d) applied to (and thereby rendered ineligible for section 212(c) relief) all aliens who had committed one of the specified offenses and who had not finally been granted section 212(c) relief before AEDPA was enacted, including those who were already in deportation proceedings or who had already applied for section 212(c) relief at the time of AEDPA's enactment.

How Have the Federal Courts Ruled on the Issue?

Following the Attorney General's decision in *Soriano,* the Board and the Immigration Courts denied applications for relief under section 212(c) filed by aliens who fell within the categories identified in AEDPA section 440(d), regardless of the date of the crime, conviction, deportation proceedings, or application for section 212(c) relief. Numerous aliens challenged their final orders of deportation in both district courts and courts of appeals, arguing that AEDPA section 440(d) should not be applied ''retroactively'' to their cases, and that the Attorney General had erred in her construction of AEDPA section 440(d) in *Soriano.*

The *Soriano* issue has given rise to widespread litigation in almost every circuit. Only the D.C. Circuit has yet to decide a case on the *Soriano* issue. Eight circuits—the First, Second, Third, Fourth, Sixth, Eighth, Ninth, and Eleventh Circuits—have now disagreed with the Attorney General's holding in *Soriano.* Seven of the eight circuits have held that section 440(d) of AEDPA does not apply to aliens who filed applications for section 212(c) relief before AEDPA was passed. *See Goncalves* v. *Reno,* 144 F.3d 110, 126–33 (1st Cir. 1998), *cert. denied,* 526 U.S. 1004 (1999); *Henderson* v. *INS,* 157 F.3d 106, 128–30 (2d Cir. 1998), *cert. denied sub nom. Reno* v. *Navas,* 526 U.S. 1004 (1999); *Sandoval* v. *Reno,* 166 F.3d 225, 239–42 (3d Cir. 1999); *Tasios* v. *Reno,* 204 F.3d 544, 547–52 (4th Cir. 2000); *Pak* v. *Reno,* 196 F.3d 666, 674–76 (6th Cir. 1999); *Shah* v. *Reno,* 184 F.3d 719, 724 (8th Cir. 1999); *Magana-Pizano* v. *INS,* 200 F.3d 603, 610–11 (9th Cir. 1999; *Mayers* v. *INS,* 175 F.3d 1289, 1301–04 (11th Cir. 1999) *superceded by statute in Richardson* v. *Reno,* 180 F.3d 1311 (11th Cir. 1999).

The First Circuit has gone further and held that AEDPA section 440(d) likewise does not apply to aliens who were placed in deportation proceedings before AEDPA was passed, even if they did not actually request section 212(c) relief until after AEDPA was passed. *See Wallace* v. *Reno,* 194 F.3d 279, 285–88 (1st Cir. 1999). Other circuits have either likewise so held or strongly implied in their reasoning. *See Henderson,* 157 F.3d at 129–31; *Sandoval,* 166 F.3d at 241–42; *Mayers,* 175 F.3d at 1304; *see also Shah,* 184 F. 3d at 724 (adopting reasoning of *Goncalves, Henderson,* and *Mayers*).

By contrast, and at the time of the publication of the proposed Soriano rule, the Seventh Circuit held, consistent with the Attorney General's conclusion in *Soriano,* that section 440(d) of AEDPA applies even to aliens who were in deportation proceedings and had applied for section 212(c) relief when AEDPA was enacted. *See Turkhan* v. *Perryman,* 188 F.3d 814, 824–28 (7th Cir. 1999); *see also LaGuerre* v. *Reno,* 164 F.3d 1035, 1040–41 (7th Cir. 1998), *cert. denied*, 120 S. Ct. 1157 (2000). However, the Seventh Circuit has recently held that an alien's due process rights were violated by the retroactive application of section 440(d) of AEDPA where there was significant evidence that the availability of a section 212(c) waiver influenced the alien's decision to plead guilty. *See Jideonwo* v. *INS,* 224 F.3d 692, 699–701 (7th Cir. 2000).

Aliens have also argued that persons who were placed in deportation proceedings *after* AEDPA was enacted, but who committed their crimes and were convicted before that date, should be eligible for section 212(c) relief, and that AEDPA section 440(d) would be impermissibly retroactive if applied to them.

Three circuits—the Third, Fifth and Tenth—have affirmatively held that AEDPA section 440(d) *does* foreclose section 212(c) relief for aliens who were placed in proceedings after AEDPA was enacted, even if their criminal offenses were committed before the enactment of AEDPA. *See DeSousa* v. *Reno,* 190 F.3d 175, 185–87 (3d Cir. 1999); *Requena-Rodriguez* v. *Pasquarell,* 190 F.3d 299, 306–08 (5th Cir. 1999); *Jurado-Gutierrez* v. *Greene,* 190 F.3d 1135, 1147–52 (10th Cir. 1999), *cert. denied sub nom Palangas-Suarez* v. *Greene,* 120 S. Ct. 1539 (2000). The Seventh Circuit has necessarily adopted that position as well. *See Turkhan,* 188 F.3d at 824–28 (holding that section 440(d) bars relief for *all* criminal aliens who had not been

granted section 212(c) relief at the time AEDPA was enacted, necessarily including all those whose convictions occurred prior to AEDPA but whose deportation proceedings were initiated after enactment of AEDPA).

The Ninth Circuit has concluded that aliens who are deportable based on a qualifying criminal conviction entered prior to AEDPA but after a full trial are properly covered by AEDPA section 440(d) and therefore ineligible for section 212(c) relief. *See Magana-Pizano,* 200 F.3d at 610–11. The Ninth Circuit also held, however, that because of concerns about retroactivity and reliance, it could not exclude the possibility that section 440(d) should not be applied to an alien who pleaded guilty or nolo contendere to his disqualifying criminal offense and who can show that the plea ''was entered in reliance on the availability of discretionary waiver under § 212(c).'' *Id.* at 613. The Court therefore remanded the case to the district court to determine whether the alien could show such reliance. *See id.* at 609. The First Circuit has issued a similar ruling, holding that section 440(d) does not apply in a case where an alien pleaded guilty to and was convicted of a qualifying offense before AEDPA was enacted but was placed in proceedings afterwards, if the alien could show that he entered his guilty plea in reliance on the state of the law before AEDPA's enactment. *Mattis* v. *Reno,* 212 F.3d 31, 35–40 (1st Cir. 2000). The First Circuit found no evidence of such reliance in that case, however. *See id.* at 39.

Additionally, the Fourth Circuit held that the statute is inapplicable, because of perceived retroactivity concerns, to an alien who pleaded guilty and was convicted before AEDPA was enacted even if his deportation proceedings were commenced after enactment of AEDPA. The court reasoned that the alien had detrimentally relied upon the availability of discretionary relief from deportation when he entered his guilty plea prior to the enactment date. *See Tasios,* 204 F.3d at 550–52.

More recently, the Second Circuit has held that section 440(d) of AEDPA is not applicable in the case of an alien in removal proceedings who entered a guilty plea before April 24, 1996, the effective date of AEDPA. *See St. Cyr* v. *INS,* 229 F.3d 406, 418 (2d Cir. 2000). The Office of the Solicitor General filed a petition for certiorari in *St. Cyr* on November 13, 2000. Additionally, the Ninth Circuit has recently ruled that Congress intended that the repeal of section 212(c) apply to all proceedings commenced after April 1, 1997. However, the Ninth Circuit also remanded this case for a determination whether the alien based his pre-AEDPA guilty plea in reliance upon the availability of section 212(c) relief, in accordance with the court's reasoning in *Magana-Pizano, supra. Richards-Diaz* v. *Fasano,* 233 F.3d 1160 (9th Cir. 2000).

Why Is the Attorney General Promulgating a Rule of Uniform Implementation of AEDPA for Aliens Seeking Section 212(c) Relief?

Issues concerning the construction of AEDPA section 440(d) affect a large number of aliens and are of considerable importance to the Department of Justice, including the INS and the Executive Office for Immigration Review (EOIR). Approximately 800 aliens who have been found deportable by the Immigration Court and the Board have filed challenges to *Soriano* in federal district court. In addition, a number of cases in which the application of *Soriano* may be dispositive are still pending before the Immigration Court and the Board.

There is an important public interest in the uniform administration of the immigration laws. The Constitution grants Congress the power to establish ''an uniform Rule of Naturalization,'' U.S. Const. art. I, § 8, cl. 4, and it is generally desirable as well that immigration rules be consistent throughout the country, to minimize distinctions among aliens based solely on geographical factors. There is also an important public interest in the completion of proceedings involving criminal aliens. The Department of Justice therefore sought to have the Supreme Court definitively resolve the *Soriano* issue during the October Term 1998 by petitioning for a writ of certiorari from the First Circuit's decision in *Goncalves* and the Second Circuit's decision in *Henderson.* On March 8, 1999, the Supreme Court denied those certiorari petitions.

In light of the Supreme Court's denial of certiorari in *Goncalves, Henderson/Navas,* and *LaGuerre* in February 2000, the decisions of eight circuits rejecting the decision in *Soriano,* and the large number of aliens who are affected by the issue, the Attorney General has considered whether the government's interest in the uniform administration of the immigration laws, avoiding unnecessary delays in the completion of proceedings involving criminal aliens, and the reasoning of the courts that have rejected her construction of AEDPA section 440(d) in *Soriano,* warrant a change in the Department's application of AEDPA section 440(d). In the interest of the uniform and expeditious administration of the immigration laws, the Attorney General acquiesces on a nationwide basis in those appellate decisions holding that AEDPA section 440(d) is not to be applied in the cases of aliens whose deportation proceedings were commenced before AEDPA was enacted.

In particular, the Attorney General acquiesces in the courts' conclusion, as a matter of statutory construction, that Congress intended that section 440(d) of AEDPA not be applied to deportation proceedings that had been commenced before AEDPA was enacted into law. In reaching that conclusion, the courts generally have applied the first step of the two-step retroactivity analysis set forth by the Supreme Court in *Landgraf* v. *USI Film Products,* 511 U.S. 244 (1994). In the first step of that analysis, the courts inquire whether Congress has specifically addressed the temporal application of a statute. The courts that have rejected *Soriano* have generally relied on two factors to reach the conclusion that Congress specifically addressed the temporal application of AEDPA section 440(d). First, they have observed that Congress expressly made other provisions of AEDPA, such as section 413(f), applicable to pending deportation proceedings, and they have drawn a negative inference from the fact that Congress did not intend section 440(d) to be applied to pending proceedings. Second, examining the legislative history of AEDPA, they have noted that an earlier version of AEDPA in Congress would have applied what became section 440(d) to pending cases, but that provision was deleted by the conference committee. *Magana-Pizano,* 200 F.3d at 611; *Pak,* 196 F.3d at 676; *Shah,* 184 F.3d at 724; *Mayers,* 175 F.3d at 1302–03; *Sandoval,* 166 F.3d at 241; *Henderson,* 157 F.3d at 129–30; *Goncalves,* 144 F.3d at 128–33.

These factors are specific to AEDPA and concern only the first step of the *Landgraf* analysis. They do not concern the question of whether the application of section 440(d) to pending deportation proceedings would be regarded as retroactive under the second step of the *Landgraf* analysis. As to that question, the Attorney General maintains the Department of Justice's longstanding position that questions about an alien's deportability or eligibility for discretionary relief from deportation are matters inherently prospective in nature.

In the absence of contrary circuit precedent, the Attorney General will continue to apply AEDPA section 440(d) in the cases of aliens whose deportation proceedings were commenced after AEDPA was enacted into law, even if the alien committed his crime or was

convicted of the crime before that date. The Attorney General continues to believe that matters affecting deportation and relief from deportation are inherently prospective in nature, and that the presumption against retroactive application of federal statutes does not apply in such circumstances. The Attorney General is currently presenting that position to the U.S. Supreme Court in *INS* v. *St. Cyr,* No. 00–767, a case involving the temporal scope of the repeal of section 212(c) in IIRIRA. Therefore, the Department declines to extend nationwide the decisions of the First, Second, Fourth, and Ninth Circuits holding AEDPA section 440(d) inapplicable to aliens who were placed in proceedings after the date of enactment of AEDPA based on guilty pleas entered before that date. The Department will, however, follow circuit precedent on the temporal scope of AEDPA section 440(d).

The interpretation of AEDPA that would be changed by this rule has, of course, affected many aliens whose deportation proceedings were commenced before enactment of AEDPA but who were unable to obtain section 212(c) relief in those proceedings because of the *Soriano* decision. This rule provides a mechanism for such aliens who now have a final order of deportation to reopen their immigration proceedings if they would have been eligible to apply for section 212(c) relief but for the *Soriano* decision.

The Attorney General has considered the important interest in avoiding delays in deportation proceedings and, on balance, has decided to define the class of aliens eligible for reopening under this rule in categorical terms. For aliens who have a final order of deportation, based on established principles requiring exhaustion of all available administrative remedies, this rule could properly be written to limit relief on reopening only to those aliens who can show that they had affirmatively applied for relief under section 212(c) in their prior immigration proceedings and had appealed an immigration judge's adverse decision to the Board of Immigration Appeals. However, this rule does not require that eligible aliens make a specific factual showing that they previously applied for section 212(c) relief notwithstanding the *Soriano* decision, or appealed an immigration judge's adverse decision to the Board. Instead, this rule is drafted in order to relieve both the government and the alien of the burdens of litigating such factual issues in each case at the motion to reopen stage. In light of the highly unusual circumstances of the *Soriano* litigation, the interest in expeditious enforcement of the immigration laws will be more effectively served by focusing attention on the merits of the claims for discretionary relief from deportation with respect to aliens in the defined class who otherwise would have been eligible to seek section 212(c) relief in their immigration proceedings but for the *Soriano* precedent.

Who Is Eligible To Apply for Section 212(c) Relief?

Under this rule, eligible aliens in pending deportation proceedings may apply for section 212(c) relief if the proceedings were commenced prior to the enactment of AEDPA. This rule also provides a 180-day period for a defined class of aliens who had been adversely affected by the *Soriano* decision to file a motion to reopen in order to apply for section 212(c) relief. This special reopening rule would cover aliens who:

(1) Had deportation proceedings before the Immigration Court commenced before April 24, 1996;

(2) Are subject to a final order of deportation;

(3) Would presently be eligible to apply for section 212(c) relief if proceedings were reopened and section 212(c) as in effect on April 23, 1996, were applied; and

(4) Either,

(i) Applied for and were denied section 212(c) relief by the Board on the basis of the 1997 decision of the Attorney General in *Soriano* (or its rationale), and not any other basis;

(ii) Applied for and were denied section 212(c) relief by the Immigration Court and did not appeal the denial to the Board (or withdrew an appeal), and would have been eligible to apply for section 212(c) relief at the time the deportation became final but for the 1997 decision of the Attorney General in *Soriano* (or its rationale); or

(iii) Did not apply for section 212(c) relief but would have been eligible to apply for such relief at the time the deportation order became final but for the 1997 decision of the Attorney General in *Soriano* (or its rationale).

This rule is not intended to apply to an alien who filed an application for section 212(c) relief that was denied by an immigration judge or the Board for reasons other than *Soriano* or its rationale. For example, an alien whose section 212(c) application was denied on the merits or before the AEDPA statute was enacted is not covered by this rule.

This rule is also not intended to apply to aliens outside the United States or aliens with final orders of deportation who have returned to the United States illegally. Moreover, this rule does not provide a basis for such aliens to seek or secure admission or parole into the United States to file a section 212(c) application.

What Is Required To Be Statutorily Eligible for Section 212(c) Relief?

The alien must be a lawful permanent resident, returning to a lawful, unrelinquished domicile of seven consecutive years, who may be admitted in the discretion of the Attorney General without regard to section 212(a) (other than paragraphs (3) and (9)(C)), who is deportable on a ground that has a corresponding ground of exclusion, and who has not been convicted of one or more aggravated felonies for which he or she has served an aggregate term of imprisonment of at least five years. *See* INA § 212(c), 8 U.S.C. § 1182(c) (1994); *In re Davis,* Interim Decision 3439 (BIA 2000); *Matter of Hernandez-Casillas,* 20 I. & N. Dec. 262 (A.G. 1991).

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

The alien must have lived in the United States as either a lawful permanent resident or a lawful temporary resident pursuant to section 245A or section 210 of the INA for at least seven years, as defined in 8 CFR 212.3(f). For purposes of this rule, an alien begins accruing time as of the date of entry or admission as either a lawful permanent resident or lawful temporary resident and the accrual of time ceases when there is a final administrative order in the alien's case, as defined in 8 CFR 240.52 and 3.1(d)(2). When a motion to reopen is filed pursuant to this rule, the alien must have accrued seven years of lawful unrelinquished domicile as of the date of his or her final administrative order which the alien seeks to reopen.

Is There a Fee for Filing This Application?

If the alien has already filed a section 212(c) application and only needs to update the application, no fee is required. If the alien has not filed a section 212(c) application and has a final administrative order, he or she must file a motion to reopen. If the motion to reopen is granted, he or she must pay the fee required by 8 CFR 103.7(b)(1) for Form I–191 (currently $170). *See* 8 CFR 103.7.

An alien in deportation proceedings who has not filed an application shall submit the Form I–191 to the Immigration Court with the appropriate fee receipt attached.

If the case is pending before the Board, the alien must file a copy of the application with the motion and if the motion is granted and the case is remanded to the Immigration Court, the alien must then file the application with the appropriate fee. Nothing in this rule changes the requirements and procedures in 8 CFR 3.31(b), 103.7(b)(1), and 240.11(f) for paying the application fee for a section 212(c) application after a motion to reopen is granted if such an application was not previously filed. Fees must be submitted to the local office of the Immigration and Naturalization Service in accordance with 8 CFR 3.31. An applicant who is eligible for section 212(c) relief and is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

What Is the Procedure for an Applicant Who Is Currently in Deportation Proceedings Before the Immigration Court or the Board of Immigration Appeals?

Immigration Court. An eligible alien who has a deportation proceeding pending before the Immigration Court should file a section 212(c) application pursuant to this rule, or request a reasonable period of time to submit an application pursuant to this rule. If the alien already has an application on file, he or she may file a supplement to the existing section 212(c) application.

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

What If An Applicant Is the Subject of a Final Order of Deportation?

Aliens who have final administrative orders. An alien who is the subject of a final order of deportation who is eligible to apply for section 212(c) relief pursuant to this rule must file a motion to reopen with the Immigration Court or the Board of Immigration Appeals, whichever last held jurisdiction. The front page of the motion and any envelope containing the motion should include the notation ''Special 212(c) Motion.'' The fee for motions to reopen (currently $110) will be waived for aliens eligible for section 212(c) relief pursuant to this rule. The waiver of the fee is only applicable to motions to reopen seeking section 212(c) relief pursuant to this rule. The reopening and remand will be limited to issues concerning the alien's eligibility for relief under section 212(c) and may not address the alien's deportability or any other basis for relief from deportation, unless the Board is also reopening under other applicable provisions of law, in which case the issues may be consolidated for hearing as appropriate and all appropriate motions fees will apply.

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

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

Cases remanded to the board. If a case has been remanded to the Board by a federal court based on a judicial decision rejecting the Attorney General's decision in *Soriano,* the Board will comply with the order of the district or circuit court.

What Happens if an Applicant Currently Has a Motion to Reopen or Motion to Reconsider Pending Before the Immigration Court or the Board?

Immigration court. If an alien has a pending motion to reopen or reconsider filed with the Immigration Court, other than a motion to reopen to apply for section 212(c) relief, he or she must file a new motion to reopen with the Immigration Court to apply for section 212(c) relief on the basis of his or her eligibility pursuant to this rule.

Board of immigration appeals. If an alien has a pending motion to reopen or reconsider filed with the Board, other than a motion to reopen to apply for section 212(c) relief, the alien must file a new motion to reopen with the Board to apply for section 212(c) relief on the basis of his or her eligibility pursuant to this rule.

New motion to reopen. An alien may file only one motion to reopen for purposes of establishing eligibility under this rule. A new motion to reopen filed pursuant to this rule either before the Immigration Court or the Board, as appropriate, must specify whether the alien has any pending motions before the Immigration Court or the Board. All motions to reopen to apply for section 212(c) relief filed pursuant to this rule are subject to the restrictions specified in this rule. The usual time and number restrictions on motions, as articulated in 8 CFR 3.2 and 3.23, shall apply to all other motions.

Is an Alien With a Final Administrative Order of Deportation Required To File a Motion To Reopen Under This Rule Within the 180 day Period in Order To Seek Section 212(c) Relief?

This rule is intended to provide a single, straightforward process for the defined class of aliens who were adversely affected by *Soriano* to reopen their immigration proceedings based on the interpretive change announced in this rule.

Accordingly, 8 CFR 3.44 is intended to provide the sole process for eligible aliens who have a final administrative order of deportation to reopen their cases on account of the change in the governing law announced in this rule in order to apply for section 212(c) relief. However, the existing reopening rules in 8 CFR 3.2 and 3.23 allow aliens to seek to reopen their cases notwithstanding the time limits on certain other grounds unrelated to a change in the law. As provided in 8 CFR 3.44(h), this rule would not prevent an alien from filing a motion to reopen under the existing rules based on any other basis or exception.

Does the Filing of an Application for Section 212(c) Relief Stay the Execution of a Final Order?

The mere filing of a motion to reopen to apply for section 212(c) relief with the Immigration Court or the Board does not stay the execution of the final order of deportation. To request that execution of the final order be stayed by the Immigration and Naturalization Service, the alien must file an Application for Stay of Removal (Form I–246), following the procedures set forth in 8 CFR 241.6. To request that execution of the final order be stayed by the Immigration Courts or the Board, the alien must comply with the procedures outlined in 8 CFR 3.2(f) and 3.23(b)(v).

What Happens if an Application Is Denied by the Immigration Court?

If the Immigration Court denies the section 212(c) application of an alien in deportation proceedings before the Immigration Court, the decision may be appealed to the Board along with, and

under the same procedures as apply to, other issues, if any, properly before the Board on appeal.

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

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

When Was the Proposed Rule Published and When Were Comments Received?

The Department of Justice (Department) published in the **Federal Register** a proposed rule at 65 FR 44476 on July 18, 2000, which created a uniform procedure for applying the law as enacted by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The Department requested comments from the public for a period of 30 days, ending on August 17, 2000. In response to requests from the public, and to ensure the public ample opportunity to fully review and comment on the proposed rule, the Department published a notice in the **Federal Register** on October 11, 2000, extending the public comment period to October 11, 2000 (65 FR 60384).

How Many Comments Were Received From Interested Parties During the Comment Period?

In response to the proposed rulemaking, the Department received 169 comments from various organizations, attorneys, and other interested individuals. Each Member of Congress, representative or member of a non-governmental organization (NGO), interested individual, or private attorney was counted separately as a ''commenter.'' Commenters included 10 Members of Congress, one Division of a State Department of Criminal Justice, 91 representatives of a number of NGOs, 11 private attorneys or legal professionals, and 56 interested individuals. Included in that number were eight letters submitted individually by eight separate NGOs. Five NGOs submitted identical form letters. One commentary was jointly submitted by a group of 10 NGOs and four legal professionals not affiliated with any of the NGOs, while another commentary was submitted by a group of 38 NGOs. Finally, identical form letter commentaries were separately submitted by 30 individual members of a single NGO. The Department appreciates the contributions of all individuals and groups who submitted comments.

What Were the Specific Comments and How Is the Department Amending the Rule as a Result?

The issues raised by the commenters generally fell into five categories: (1) Procedural requirements; (2) eligibility; (3) nationwide uniformity; (4) parole; and (5) miscellaneous issues. The number of commenters raising issues pertaining to procedural requirements totaled 151 and those raising eligibility concerns totaled 158. Commenters who raised issues pertaining to parole totaled 123, while only 20 commenters were concerned with uniformity issues. Five commenters addressed miscellaneous issues. Comments in each of these areas are discussed in further detail below.

1. Issues Pertaining to Procedural Requirements

Concerns regarding various procedural requirements were raised by 151 commenters. All but two representatives from NGOs made suggestions concerning procedural issues, and 48 out of 56 interested individuals made similar suggestions.

Comment: One hundred forty-six commenters expressed concern that the proposed rule lacks a mechanism to inform the public of available relief. These commenters suggested that the Department undertake the responsibility to notify each alien who appeared to be potentially eligible to file a motion to reopen, since it would be unlikely that an eligible, unrepresented alien would be aware of the relief available to him or her under the rule. Further, this group of commenters suggested that the Department provide public notice of the relief in appropriate venues and languages reaching the largest number of individuals both in and outside of the United States.

Response: Notification of the availability of section 212(c) relief under this rule will be provided in the same manner and form as notification for other forms of relief. Final rules are always published in the **Federal Register** and are available on the Federal Register website. In addition, the Department will issue a press release announcing the effective date of the final rule and outlining the eligibility requirements. The Department has received, and will likely continue to receive, numerous telephone inquiries regarding the availability of section 212(c) relief pursuant to this rule from interested individuals and has directed them to the **Federal Register** for further updates.

Comment: A group of 10 NGOs suggested that all individuals currently in proceedings should be notified, in person or via certified mail, of their possible eligibility for relief.

Response: Because the regulation includes individuals who are potentially eligible for relief even though they have not yet filed a section 212(c) application, it would be difficult for the Department to identify the class of potentially eligible individuals with any accuracy. Moreover, in view of the administrative burdens involved in such a notification initiative, the Department has concluded that the traditional means of notification through the **Federal Register** is sufficient, particularly in combination with the press release the Department is issuing on this subject.

Comment: These same commenters, speaking as a group, stated that although aliens presently in proceedings before the Immigration Court or the Board are intended to be covered by the proposed rule, the rule itself does not contain language which specifically includes such aliens.

Response: 8 CFR 212.3(g) includes all eligible aliens whose deportation proceedings commenced before April 24, 1996. Nothing in the rule excludes otherwise covered aliens whose proceedings are pending as of the effective date of this final rule.

Comment: The same group of 10 NGOs provided additional suggestions: (1) Eliminating the requirement of a motion to reopen altogether; (2) requiring the Board and the Immigration Courts to reopen *sua sponte* each case in which an individual may be eligible for relief under the rule, and (3) providing notice to the alien of such potential eligibility. An additional 129 commenters endorsed the *sua sponte* reopening of cases. Thirty commenters also suggested that no remand should be required for cases currently pending before the Board. Instead, they suggested that any appeal by the INS deemed without merit by the Board be dismissed and the decision of the Immigration Judge granting the section 212(c) waiver be reinstated.

Response: Pursuant to 8 CFR 3.2 and 3.23, *sua sponte* reopening of any case may occur at the discretion of the Board or an Immigration Judge, but such reopening is not mandated by this rule. The burden of establishing eligibility for section 212(c) relief, as with any other request for relief from deportation, is

upon the alien, and it is incumbent upon any alien subject to a final order of deportation who wishes to pursue relief in proceedings to do so in a diligent and timely fashion, under the provisions of this rule. The Department cannot, as a practical matter, undertake the enormous burden of examining past cases that resulted in a final order of deportation for possible *sua sponte* reopening. Such a burden would result in inordinate delays in adjudicating cases currently pending before the Board and the Immigration Courts.

With regard to INS appeals of section 212(c) applications that are presently pending before the Board, these cases will be adjudicated in the same manner as any other pending appeal subject to a superseding regulation or change in the law. The Board will continue to exercise its appellate authority to affirm the decision of the Immigration Judge, remand the case for an additional hearing, or adjudicate the appeal by applying the provisions of section 212(c) as promulgated prior to AEDPA.

Comment: One commenter writing on behalf of an NGO suggested that the Department adopt a ''streamlined'' motion to reopen procedure using a simple, one-page fill-in or check-off form.

Response: In view of the widely varying circumstances in each case, and the traditional requirement that persons seeking to reopen completed proceedings carry a burden of establishing, among other things, prima facie eligibility for relief upon reopening, the Department declines to adopt a ''one-size-fits-all'' form and will adhere to the normal requirements concerning motions to reopen, except as specifically modified by the rule.

Comment: Twenty-one commenters suggested that aliens filing motions to reopen should not be required to file any legal documents previously submitted to the INS or to the Immigration Court.

Response: In cases where an alien is filing a motion to reopen his or her proceedings based upon alleged eligibility for a form of relief from removal or deportation, the alien has the burden of establishing prima facie eligibility for that form of relief. This rule is not intended to alter that fundamental legal principle. In accordance with 8 CFR 3.23(b)(3), ''[a]ny motion to reopen for the purpose of acting upon an application for relief must be accompanied by the appropriate application for relief and all supporting documents.'' Because the files maintained by the INS often vary from those maintained by the Immigration Courts and the Board, a policy at variance from the regulations would cause aliens to operate on the mistaken assumption that the Immigration Court, the Board, and the INS maintain duplicate files while considering eligibility for relief. In addition, if an alien filed a motion to reopen without attaching supporting documents, but with the expectation that the Immigration Judge or Board would rely on certain documents the alien believes were already in the file in adjudicating that motion, that alien may not necessarily make a prima facie case for relief.

Comment: One hundred thirty-five commenters requested either that the 90-day time limit on motions to reopen be eliminated and that no time limit whatsoever be imposed, or that the time period for filing a motion to reopen be extended from 90 days to 1 year commencing on the date of actual notice to the alien. They noted that it could prove difficult for aliens and their representatives to gather the necessary documentation to support their motions to reopen during the currently allotted 90-day time period.

Response: The Department recognizes the difficulty that aliens and/or their representatives may experience in assembling adequate documentation to establish prima facie eligibility under this rule. The Department also recognizes that in cases where the order of deportation became final many years ago, aliens and/or their representatives might need to request copies of conviction records from Federal or State authorities. The Department recognizes that it may be difficult for many bona fide applicants to become informed of available relief, obtain counsel, gather all necessary documents and file a motion to reopen within the currently allotted 90 days time period. Accordingly, the Department is adopting this suggestion to a limited extent, and is extending the period of time during which motions to reopen may be filed to 180 days commencing on the effective date of this rule. The Department feels that this time period strikes a reasonable balance between the litigative difficulties for aliens filing motions and the administrative need for a finite and workable program.

Comment: Sixty-five percent (65%) of the commenters suggested that an automatic stay of deportation be provided in conjunction with the filing of a motion to reopen under this rule, effective upon filing of the motion.

Response: With very limited exceptions, the prevailing rule in immigration jurisprudence is that the mere filing of an application, motion, or petition does not automatically stay execution of a deportation order. Were it otherwise, individuals subject to a final order of deportation could thwart or delay deportation through meritless filings with the Service, Immigration Court, or Board. The Department will adhere to the traditional approach in this rule. Aliens who believe they are eligible for relief under this rule are free to request a discretionary stay of deportation from the Service, the Immigration Court, or the Board as appropriate.

2. Issues Pertaining to Eligibility

One hundred fifty-four commenters raised concerns regarding the determination of eligibility for relief under the proposed rule.

Comment: One hundred forty-eight commenters felt that using the date of ''commencement'' of proceedings to determine eligibility for section 212(c) relief was arbitrary, because commencement of proceedings is affected by various extraneous factors. For example, approximately 20 commenters suggested that individuals who had been served with Orders to Show Cause (OSCs) at any time, whether before or after April 24, 1996, should be eligible to apply for relief under the proposed rule, regardless of whether they had already filed a section 212(c) waiver application. An equal number of commenters suggested that aliens who had committed or been convicted of offenses prior to April 24, 1996, be afforded an opportunity to apply for relief under the proposed rule. One commenter suggested that section 212(c) be amended to include post-April 1996 convictions.

Response: The well-established rule in immigration law, as stated in 8 CFR 3.14(a), is that ''[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service.'' Up until the point of filing, the Service can cancel a charging document. *See* 8 CFR 239.2(a). After that point, it must request that the Immigration Court terminate proceedings. *See* 8 CFR 239.2(c). Hence, filing of the charging document with the Immigration Court is the critical event as regards the initiation of deportation proceedings.

Because many other legal determinations depend on whether proceedings have commenced, the need for a bright-line rule as to the time of commencement is clear. The Department will adhere to its well-established regulatory scheme as regards commencement of proceedings, and will not rely on some other event such as the issuance or service of the charging

document as determining whether proceedings have begun.

Some circuits have looked to the service of a charging document as the critical event for purposes of ''retroactivity'' analysis. The Department disagrees with the reasoning of these courts, and declines to adopt it in this rule. In any such circuit, however, the Department will regard AEDPA section 440(d) as inapplicable to aliens whose charging documents were served before AEDPA's enactment if required to do so by circuit precedent. A circuit's adoption of a ''retroactivity'' analysis based on service of the charging document does not compel the further conclusion that proceedings commence with the service of a charging document. The latter conclusion flatly contradicts well-settled law.

Comment: In adjudicating motions to reopen, one commenter suggested that when determining eligibility for section 212(c) relief in proceedings, only evidence available before April 24, 1996, be considered.

Response: Applications for relief from deportation are considered to be ongoing, and the Board assesses eligibility for relief as of the time of its decision. *See In re Yeung,* Interim Decion 3297 (BIA 1997); *Matter of U-M-,* 20 I. & N. Dec. 327, 332 (BIA 1991), *aff'd sub nom. Urbina-Mauricio* v. *INS,* 989 F.2d 1085 (9th Cir. 1993). To abandon this long-standing view would put the Department in the position of granting permanent U.S. status to persons presently ineligible for such status under applicable statutes. The Department declines to adopt such an approach. It should be noted that this rule often operates to the advantage of the respondent in proceedings, for example, by allowing for consideration of equities gained up until the date of the application.

Comment: Approximately *five* commenters felt that the *Soriano* decision deprived many aliens of a full and fair opportunity to pursue their applications for relief from deportation under section 212(c). These commenters cited examples where aliens were not permitted to file section 212(c) waiver applications because they were found ineligible on statutory grounds and their applications were pretermitted. Two Members of Congress joined in this view, noting that absent section 440(d) of the AEDPA, an alien would have been permitted to litigate issues of statutory eligibility. Additionally, thirty-one percent of commenters felt that affected aliens should be returned to their position prior to the issuance of the *Soriano* decision by the Attorney General. One hundred forty commenters suggested that the language in proposed 8 CFR 3.44(b)(4)(i), which currently states, *inter alia,* that:

> A motion to reopen proceedings to seek section 212(c) relief under this section must establish that the alien: * * * (4) Either—(i) Applied for and was denied section 212(c) relief by the Board on the basis of the 1997 decision of the Attorney General in Matter of Soriano (or its rationale), *and not any other basis* (emphasis added); be changed to read as follows:
>
> A motion to reopen proceedings to seek section 212(c) relief under this section must establish that the alien: * * * (4) Either—(i) Applied for and was denied section 212(c) relief *in whole or in part on the basis of the Attorney General's 1997 decision in Soriano.* (Emphasis added.)

One commenter suggested that the rule contain examples illustrating the meaning of ''on the basis of * * * [*Soriano*] and not any other basis.''

Response: The purpose of this rule is to provide a uniform interpretation of AEDPA section 440(d) and to provide a remedy for certain aliens subject to a final order based on proceedings commenced before AEDPA's enactment who are eligible presently (*i.e.,* at the time of decision) for section 212(c) relief and would have been eligible to apply at the time of their final orders but for the *Soriano* decision. The ''not any other basis'' language ensures that persons who were ineligible for or denied relief on some other basis, and thus were not affected by *Soriano*, do not improperly benefit from the rule.

Comment: Presenting the opposite view that the proposed *Soriano* rule should be construed as narrowly as possible, another commenter suggested deleting proposed 8 CFR 3.44(b)(4)(iii) altogether, which permits aliens who did not apply for section 212(c) relief but would have been eligible for such relief ''but for'' the Attorney General's decision in *Soriano*. This commenter also recommended that the final condition imposed in 3.44(b)(4)(i), which restricts eligibility to those aliens whose section 212(c) applications were denied ''on the basis'' of *Soriano* ''and not any other basis,'' be added to 3.44(b)(4)(ii). Another commenter agreed with the proposed rule as written, stating that section 212(c) applications denied for reasons other than *Soriano* should be excluded from the coverage of the rule.

Response: As noted in the proposed rule, this final rule is intended to provide a uniform interpretation of section 440(d) of AEDPA and to mitigate disagreements among the circuits regarding the scope of its application. If the Department were to delete 8 CFR section 3.44(b)(4)(iii), relief under this rule would be limited to those aliens who filed applications for 212(c) relief and would leave unresolved those cases where an alien's application for 212(c) relief was pretermitted. Therefore, the Department declines to adopt this suggestion.

Comment: A group of 10 commenters suggested that the word ''presently'' be deleted in proposed 8 CFR 3.44(b)(3). These commenters stated that, as currently written, the proposed rule would exclude individuals eligible for section 212(c) at the time of an incorrectly pretermitted application, but who ''presently'' have not had a lawful unrelinquished domicile of seven years in the United States.

Response: The Department chooses to retain the word ''presently'' in 8 CFR section 3.44(b)(3). As noted above, the rule does require eligibility (but for the *Soriano* decision) for section 212(c) relief at the time of the final deportation order. But the rule requires present eligibility for relief as well, because applications for relief are considered to be ongoing, and the Department's adjudicators assess eligibility for relief at the time of decision. This rule is not intended to change the statutory requirements for eligibility for section 212(c) relief, but is strictly limited to providing a uniform interpretation of the temporal scope of section 440(d) of AEDPA.

3. Issues Pertaining to Nationwide Uniformity

Nineteen commenters stated that the proposed rule is too narrow, and will not achieve the desired goal of nationwide uniformity due to the controlling case law in numerous circuits. These commenters cited the 1st, 4th, and 11th Circuit decisions holding that lawful permanent residents may apply for section 212(c) relief if they were in deportation proceedings before April 1, 1997, and pled guilty to criminal charges in reliance on eligibility for section 212(c) relief. *See, e.g. Mattis,* 212 F.3d at 35–40 (section 212(c) available to aliens in deportation proceedings who pled guilty to a crime in reliance upon availability of section 212(c) relief); *Wallace,* 194 F.3d at 287 (section 212(c) available to aliens in proceedings, deemed to commence when the OSC was served upon the alien, rather than filed with the Immigration Court); *Tasios,* 204 F.3d at 550–52 (section 212(c) available to aliens who pled guilty prior to the enactment of the AEDPA); *Alanis-Bustamante* v. *Reno,* 201 F.3d 1303,

1308–10 (11th Cir. 2000) (section 212(c) available to aliens in proceedings, deemed to commence when the OSC was served on the alien, rather than filed with the Immigration Court).

Response: By this rule, the Department only agrees to acquiesce on a nationwide basis in the decisions of those circuits that have ruled that Congress did not intend to apply AEDPA section 440(d) to the cases of aliens whose deportation proceedings were commenced before AEDPA was enacted. While uniformity is an important goal, and one of the principal motivations for this rule, there is no requirement that the Department adopt the view of the least restrictive circuit in order to achieve perfect uniformity, and it will not do so. Rather, the Department has adopted what it considers to be the soundest and best supported rule among the various approaches taken by the courts of appeals.

Comment: By contrast, one commenter stated that ''[n]one of the Article I constitutional powers to make ''uniform laws'' have been interpreted to require true or pure uniformity.'' Further, this commenter stated that at most ''geographical uniformity'' in a given location, rather than nationwide, is required by the Constitution and that ''uniformity among persons'' is not required.

Response: As noted above, the Department agrees that perfect uniformity is not required. Nevertheless, uniformity is an important goal, and the present rule is intended to achieve that goal within reasonable limits.

4. Issues Pertaining to Parole

Comment: One hundred twenty-three commenters suggested that lawful permanent residents who complied with their deportation orders and were deported from the United States be granted parole, thus enabling them to pursue motions to reopen and present cases on the merits of their section 212(c) waiver applications. One commenter believed that no filing deadline should be imposed for an alien who is currently outside of the United States and who asserts eligibility for relief under this rule.

One hundred four commenters stated that absent a provision to permit parole of aliens into the United States, such aliens will be summarily denied relief. Citing H.R. 5062, which was introduced in the 106th Congress, Second Session, these commenters indicated that in recently proposed legislation, the House of Representatives established that aliens unjustly removed from the United States should have the opportunity to return to the United States to have their claims considered.

Nonetheless, one commenter expressed support for the language in proposed 8 CFR 3.44(i), which excludes aliens who have departed, aliens who have a final order of removal and illegally returned, and aliens who have not been admitted or paroled into the United States. A group of 10 commenters felt that 3.44(i), in its entirety, should be deleted from the final rule.

Response: The Department's primary purpose in publishing this rule is to alleviate the inter-circuit conflicts regarding the temporal scope of section 440(d) of AEDPA. None of the circuits that have disagreed with the Attorney General's decision in *Soriano* have adopted a general view that aliens who were removed or departed the United States should be permitted to return. The Department has no method of identifying or discerning the location of aliens who departed on account of the *Soriano* decision and the commenters who offered this suggestion have provided none. The government's interest in finality, the considerable administrative burdens involved, and the risk of paroling persons ultimately determined not to be eligible for relief all counsel against providing for the parole of deported criminals back into the United States.

5. Miscellaneous Issues

Five commenters addressed miscellaneous issues. Three commenters expressed their general support for the proposed rule.

Comment: One commenter stated that overall, the proposed rule is not supported by legislative history. That commenter stated that the goal of Congress in amending and ultimately repealing section 212(c) relief was to enhance the ability of the United States to deport criminal aliens.

Response: While the Department acknowledges Congress' general intentions regarding the efficient removal of criminal aliens, it must also note the lack of perfect congressional clarity with regard to the applicability of AEDPA section 440(d) to cases pending at the time of AEDPA's enactment. This lack of clarity has led to costly litigation, sharp disagreements within the circuits, and a consequent lack of uniformity in the law on this question. The present rule seeks to ameliorate this situation by promoting uniformity in the law, within reasonable limitations, throughout the United States.

Comment: One commenter suggested that the policy reasons underlying the proposed rule apply equally to section 212(i) waivers. This commenter stated that the regulations should address and overturn the Board's ruling in *In re Cervantes-Gonzalez*, Interim Decision 3380 (BIA 1999), which addressed section 212(i) of the INA and its requirement that an alien establish extreme hardship to his or her U.S. citizen or permanent resident alien spouse or parent in order to qualify for a waiver of inadmissibility.

Response: The present rule seeks to promote uniformity by adopting a single rule for applying AEDPA section 440(d) nationwide (except where prohibited by the law of the circuit). The policy goals underlying this initiative do not exist with respect to section 212(i), which has not been the subject of similarly sharp or widespread interpretive disagreement within the circuits. The Department will not disturb the existing administrative jurisprudence regarding section 212(i).

What Technical Amendments Are Being Made to the Board of Immigration Appeals Streamlining Regulation?

8 CFR 3.1(d)(1–a) was redesignated as section 3.1(d)(2) in the Board of Immigration Appeals Streamlining final regulation published Monday, October 18, 1999 (64 FR 56135). Additionally, 8 CFR 3.1(d)(2) was redesignated as section 3.1(d)(3). Consequently, those paragraphs in 8 CFR which refer to section 3.1(1–a) or section 3.1(d)(2) are misleading and need to be amended.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule allows certain aliens to apply for INA section 212(c) relief; it has no effect on small entities such as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 804. This rule will not result in an annual

effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

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

Executive Order 13132

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

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

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

Paperwork Reduction Act

This rule will increase the use of Form I–191 but will not result in a material change in that form, and the INS is adjusting the total burden hours of the form accordingly.

List of Subjects

8 CFR Part 3

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

8 CFR 212

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

8 CFR 240

Administrative practice and procedure, Immigration.

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

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note; 8 U.S.C. 1103, 1252 note, 1324b, 1362, 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002.

§ 3.1 [Amended]

2. In section 3.1(d)(2)(iii), references to ''paragraph (d)(1–a)(i)'' are revised to read ''paragraph (d)(2)(i).''

§ 3.3 [Amended]

3. In section 3.3(b), the reference to ''§ 3.1(d)(1–a)(i)'' is revised to read ''§ 3.1(d)(2)(i).''

4. Section 3.44 is added to subpart C to read as follows:

§ 3.44 Motion to reopen to apply for section 212(c) relief for certain aliens in deportation proceedings before April 24, 1996.

(a) *Standard for adjudication.* Except as provided in this section, a motion to reopen proceedings to apply for relief under section 212(c) of the Act will be adjudicated under applicable statutes and regulations governing motions to reopen.

(b) *Aliens eligible to reopen proceedings to apply for section 212(c) relief.* A motion to reopen proceedings to seek section 212(c) relief under this section must establish that the alien:

(1) Had deportation proceedings before the Immigration Court commenced before April 24, 1996;

(2) Is subject to a final order of deportation,

(3) Would presently be eligible to apply for section 212(c) as in effect on or before April 23, 1996; and

(4) Either—

(i) Applied for and was denied section 212(c) relief by the Board on the basis of the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale), and not any other basis;

(ii) Applied for and was denied section 212(c) relief by the Immigration Court, did not appeal the denial to the Board (or withdrew an appeal), and would have been eligible to apply for section 212(c) relief at the time the deportation became final but for the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale); or

(iii) Did not apply for section 212(c) relief but would have been eligible to apply for such relief at the time the deportation order became final but for the 1997 decision of the Attorney General in *Matter of Soriano* (or its rationale).

(c) *Scope of reopened proceedings.* Proceedings shall be reopened under this section solely for the purpose of adjudicating the application for section 212(c) relief, but if the Immigration Court or the Board reopens on other applicable grounds, all issues encompassed within the reopening proceedings may be considered together, as appropriate.

(d) *Procedure for filing a motion to reopen to apply for section 212(c) relief.* An eligible alien must file either a copy of the original Form I–191 application, and supporting documents, or file a copy of a newly completed Form I–191, plus all supporting documents. An alien who has a pending motion to reopen or reconsider before the Immigration Court or the Board, other than a motion for section 212(c) relief, must file a new motion to reopen to apply for section 212(c) relief pursuant to this section. The new motion to reopen shall specify any other motions currently pending before the Immigration Court or the Board that should be consolidated. The Service shall have 45 days from the date of service of the motion to reopen to respond. In the event the Service does not respond to the motion to reopen, the Service retains the right in the reopened proceedings to contest any and all issues raised. Any motion for section 212(c) relief pending before the Board or the Immigration Courts on January 22, 2001 that would be barred by the time or number limitations on motions shall be deemed to be a motion to reopen filed pursuant to this section.

(e) *Fee and number restriction for motion to reopen waived.* No filing fee is required for a motion to reopen to apply for section 212(c) relief under this section. An eligible alien may file one motion to reopen to apply for section 212(c) relief under this section, even if a motion to reopen was filed previously in his or her case.

(f) *Deadline to file a motion to reopen to apply for section 212(c) relief under this section.* An alien with a final administrative order of deportation must file a motion to reopen by June 23, 2001.

(g) *Jurisdiction over motion to reopen to apply for section 212(c) relief and remand of appeals.*

(1) Notwithstanding any other provisions, any motion to reopen filed pursuant to this section to apply for section 212(c) relief shall be filed with

the Immigration Court or the Board, whichever last held jurisdiction over the case.

(2) If the Immigration Court has jurisdiction, and grants only the motion to reopen to apply for section 212(c) relief pursuant to this section, it shall adjudicate only the section 212(c) application.

(3) If the Board has jurisdiction and grants only the motion to reopen to apply for section 212(c) relief pursuant to this section, it shall remand the case to the Immigration Court solely for adjudication of the section 212(c) application (Form I–191), unless the Board chooses to exercise its discretionary authority to adjudicate the matter on the merits without a remand.

(h) *Applicability of other exceptions to motions to reopen.* Nothing in this section shall be interpreted to preclude or restrict the applicability of any other exception to the motion to reopen provisions of this part as defined in 8 CFR 3.2(c)(3) and 3.23(b).

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

(1) Aliens who have departed the United States;

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

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

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

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

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

6. Paragraph (g) is added to section 212.3 to read as follows:

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

* * * * *

(g) *Relief for certain aliens who were in deportation proceedings before April 24, 1996.* Section 440(d) of Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) shall not apply to any applicant for relief under this section whose deportation proceedings were commenced before the Immigration Court before April 24, 1996.

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

7. The authority citation for 8 CFR part 240 continues to read as follows:

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

§ 240.15 [Amended]

8. In § 240.15, the reference to ''§ 3.1(d)(1–a)'' is revised to read ''§ 3.1(d)(2).''

§ 240.21 [Amended]

9. In § 240.21(c), the reference to ''§§ 3.1(d)(2) and 3.39'' is revised to read ''§§ 3.1(d)(3) and 3.39.''

§ 240.53 [Amended]

10. In § 240.53(a), the reference to § 3.1(d)(1–a)'' is revised to read ''§ 3.1(d)(2).''

Dated: January 17, 2001.

Janet Reno,

Attorney General.

[FR Doc. 01–1785 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–75–AD; Amendment 39–12081; AD 2001–01–11]

RIN 2120–AA64

Airworthiness Directives; Rolladen Schneider Flugzeugbau GmbH Models LS 4 and LS 4a Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rolladen Schneider Flugzeugbau GmbH (Rolladen Schneider) Models LS 4 and LS 4a sailplanes. This AD requires you to inspect the airbrake system for damage and proper rigging, with correction, repair, or replacement, as necessary. This AD also requires you to report any damage found to the Federal Aviation Administration (FAA). This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct damage to the airbrake locking bracket caused by asymmetric loads. This condition could result in the pilot's inability to operate the airbrake controls, with consequent loss of sailplane control.

DATES: This AD becomes effective on March 9, 2001.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of March 9, 2001.

ADDRESSES: You may get the service information referenced in this AD from Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany; phone: ++ 49 6103 204126; facsimile: ++ 49 6103 45526. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–75–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Rolladen Schneider Models LS 4 and LS 4a sailplanes. The LBA reports two occurrences of damaged airbrake locking brackets found on the above-referenced sailplanes. The damage was the result of improper rigging of the airbrake system. The asymmetric load that occurs over time with an improperly rigged airbrake system could result in cracks in the welding region of the airbrake tube and lateral deformation of the airbrake locking bracket.

What are the consequences if the condition is not corrected? Damage to the airbrake locking bracket, if not detected and corrected, could result in the pilot's inability to operate the airbrake controls with consequent loss of sailplane control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Rolladen Schneider Models LS 4 and LS 4a sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 9, 2000 (65 FR 67315). The NPRM proposed to require you to inspect the airbrake locking bracket on the rear landing gear box for signs of

fatigue (cracks in the paint, paint chips, or cracks in the welding region to the tube) and inspect for proper rigging of the airbrake system; reassemble the airbrake system (if improper rigging is found). If any sign of fatigue is evident, disassemble the airbrake system, obtain a modified airbrake locking bracket from the manufacturer, install this bracket, and accomplish certain adjustments after reassembling the airbrake system; and report any damage found to the FAA.

The FAA is requiring a reporting requirement so we can get an idea of how many sailplanes in the fleet have damaged or incorrectly rigged airbrake systems. We will utilize this information in deciding whether any of the required actions should be repetitive or whether we should initiate additional rulemaking.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination

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

—Will not change the meaning of the AD; and

—Will not add any additional burden upon the public than was already proposed.

Cost Impact

How many sailplanes does this AD impact? We estimate that this AD affects 78 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the inspection and any necessary reassembly:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	Not applicable	$60 per sailplane	$60 × 78 = $4,680.

We estimate the following costs to accomplish any necessary modification that will be required based on the results of the inspection. We have no way of determining the number of sailplanes that may need such modification:

Labor cost	Parts cost	Total cost per sailplane
2 workhours × $60 per hour = $120	The manufacturer will modify the airbrake bracket free of charge.	$120 per sailplane.

Compliance Time of this AD

What is the compliance time of this AD? The compliance time of this AD is within the next 30 calendar days after the effective date of this AD.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? Damage to the airbrake locking brake occurs as a result of sailplane operation. However, the reason the damage occurs is because of incorrect rigging of the airbrake system. We have determined that a calendar time for compliance is necessary because this incorrect rigging is not directly related to sailplane operation. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it is for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time will be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Why is the compliance time of this AD different than the German AD and the service information? The service information specifies the actions required in this AD ''prior to further flight'' and the German AD mandates these actions ''prior to further flight'' for sailplanes registered for operation in Germany. The FAA does not have justification for requiring the action prior to further flight. Instead, the FAA has determined that 30 calendar days is a reasonable time period for accomplishing the actions in this AD.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–01–11 Rolladen Schneider Flugzeugbau GMBH:

Amendment 39–12081; Docket No. 99–CE–75–AD.

(a) *What sailplanes are affected by this AD?* This AD affects models LS 4 and LS 4a sailplanes, serial numbers 4000 through 4852, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above sailplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct damage to the airbrake locking bracket caused by asymmetric loads. This condition could result in the pilot's inability to operate the airbrake controls with consequent loss of sailplane control.

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

Actions	Compliance	Procedures
(1) Inspect the airbrake locking bracket on the rear landing gear box for signs of fatigue (cracks in the paint, paint chips, or cracks in the welding region to the tube) and inspect for proper rigging of the airbrake system.	Within the next 30 calendar days after March 9, 2001 (the effective date of this AD).	Inspect for proper rigging in accordance with the procedures contained in the applicable maintenance manual. Inspect the airbrake locking bracket in accordance with the procedures contained in Rolladen Schneider Technical Bulletin No 4042, dated July 2, 1999.
(2) If any sign of fatigue is evident, accomplish the following: (i) Disassemble the airbrake system; (ii) Obtain a modified airbrake locking bracket from the manufacturer (2-day turnaround time) and install this bracket; and (iii) Reassemble the airbrake system and accomplish the adjustments listed in the service bulletin.	Accomplish all actions prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Accomplish the disassembly, installation, assembly, and adjustments in accordance with procedures contained in the applicable maintenance manual and the procedures in Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999.
(3) If no signs of fatigue are found but the airbrake system is incorrectly assembled, disassemble the system and reassemble, including accomplishing the adjustments listed in the service bulletin.	Accomplish all actions prior to further flight after the inspection required in paragraph (d)(1) of this AD.	Accomplish in accordance with procedures contained in the applicable maintenance manual and the procedures in Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999.
(4) If no signs of fatigue are found and the airbrake system is correctly assembled, then no further action is required by this AD.	AD complied with	AD complied with.
(5) If any discrepancy is found that requires additional work as required by paragraphs (d)(2) and (d)(3) of this AD, then send information describing the discrepancies found and the follow-on work that was necessary to the FAA.	Within 10 days after the inspection required by this AD or within 10 days after March 9, 2001 (the effective date of this AD), whichever occurs later.	Mail the information to: FAA, Small Airplane Directorate (ACE–112), Attention: Docket No. 99–CE–75–AD, 901 Locust, Room 301, Kansas City, Missouri 64106.

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

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

(2) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 1: This AD applies to each sailplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Brian Hancock, Aerospace Engineer, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4143; facsimile: (816) 329–4090.

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

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Rolladen Schneider Technical Bulletin No. 4042, dated July 2, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on March 9, 2001.

Note 2: The subject of this AD is addressed in German AD 1999–270, dated July 22, 1999.

Issued in Kansas City, Missouri, on January 8, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1230 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–391–AD; Amendment 39–12080; AD 2001–01–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400F, 767–200, and 767–300 Series Airplanes Equipped With Pratt & Whitney Model PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747–400, 747–400F, 767–200, and 767–300 series airplanes equipped with Pratt & Whitney Model PW4000 series engines. This action requires revising the Airplane Flight Manual (AFM). This action is necessary to prevent reduced acceleration and climb performance relative to performance data in the AFM, which could result in runway overruns or impact with obstacles or terrain. This action is intended to address the identified unsafe condition.

DATES: Effective February 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2001.

Comments for inclusion in the Rules Docket must be received on or before March 23, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–391–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–391–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis Kammers, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2956; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports that Pratt & Whitney Model PW4000 series engines with certain early-production fan blades (Phase 0/1, FB2B or FB2T) installed on Boeing Model 747–400, 747–400F, 767–200, and 767–300 series airplanes do not produce the amount of thrust indicated in the Airplane Flight Manual (AFM). This thrust shortfall is due to erosion of the fan blade's leading edge. The flight crew has no indication of this shortfall in thrust. This condition results in reduced acceleration and climb performance relative to performance data in the AFM, which, if not corrected, could result in an overrun of the runway or impact with an obstacle or terrain.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Telex M–7200–00–02672, dated November 1, 2000, including two attachments titled, ''Performance for Operation of PW4000 Series Engines with FB2B or FB2T Fans Installed[,] 747–400,'' and ''Performance for Operation of PW4000 Series Engines with FB2B or FB2T Fans Installed[,] 767–200/767–300,'' both dated November 1, 2000. The telex and its attachments contain performance adjustments for the AFM for Model 747–400, 747–400F, 767–200, and 767–300 series airplanes equipped with one or more Pratt & Whitney Model PW4000 series engines with early production fan blades. Inclusion of these performance adjustments in the AFM addresses the unsafe condition associated with the shortfall in thrust caused by the early production fan blades.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent reduced acceleration and climb performance relative to performance data in the AFM, which could result in runway overruns or impact with obstacles or terrain. This AD requires accomplishment of the actions specified in the telex and attachments described previously, except as discussed below.

Differences Between Telex and This AD

Operators should note that, although the telex states that the airplane manufacturer was advised that the FAA would recommend a compliance time of 45 days after the effective date of the AD for the actions in the telex, paragraph (a) of this AD actually requires revising the AFM within 30 days after the effective date of this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to revise the AFM. In light of all of these factors, the FAA finds a 30-day compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that this AD applies to all Boeing Model 747–400, 747–400F, 767–200, and 767–300 series airplanes equipped with Pratt & Whitney Model PW4000 series engines. For airplanes that have current-production fan blades (Phase 3, FB2C) installed on all engines, the performance adjustments in the attachments to the telex referenced above are not applicable. However, this AD requires revision of the AFM for all airplanes to address the potential for future installation of early production fan blades (Phase 0/1, FB2B or FB2T). Note 1 is included in this AD to clarify this point.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, 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 shall 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 AD 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 Number 2000–NM–391–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–01–10 Boeing: Amendment 39–12080. Docket 2000–NM–391–AD.

Applicability: Model 747–400, 747–400F, 767–200, and 767–300 series airplanes equipped with Pratt & Whitney Model PW4000 series engines; certificated in any category.

Note 1: For airplanes that have current-production fan blades (Phase 3, FB2C) installed on all engines, the performance adjustments in the attachments to Boeing Telex M–7200–00–02672, dated November 1, 2000, as referenced in this AD, are not applicable. However, this AD requires revising the Airplane Flight Manual (AFM) for all airplanes to address the potential for future installation of certain early-production fan blades (Phase 0/1, FB2B or FB2T).

Note 2: 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 (c) 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 reduced acceleration and climb performance, relative to performance data in the AFM, which could result in runway overruns or impact with obstacles or terrain, accomplish the following:

AFM Revision

(a) Within 30 days after the effective date of this AD, revise the FAA-approved AFM by inserting a copy of this AD with Boeing Telex M–7200–00–02672, dated November 1, 2000, including the performance adjustments in ''Performance for Operation of PW4000 Series Engines with FB2B or FB2T Fans Installed[,] 747–400,'' (for Boeing Model 747–400 and 747–400F series airplanes) or ''Performance for Operation of PW4000 Series Engines with FB2B or FB2T Fans Installed[,] 767–200/767–300,'' (for Boeing Model 767–200 and –300 series airplanes), both dated November 1, 2000, as applicable.

(b) When the information in Boeing Telex M–7200–00–02672 and its attachments have been incorporated into FAA-approved general revisions of the AFM, the general revisions may be incorporated in the AFM, and this AD with the telex and its attachments may be removed from the AFM.

Alternative Methods of Compliance

(c) 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, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) 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.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Telex M–7200–00–02672, including Attachments ''Performance for Operation of PW4000 Series Engines with FB2B or FB2T Fans Installed[,] 747–400'' and ''Performance for Operation of PW4000 Series Engines with FB2B or FB2T Fans Installed[,] 767–200/767–300,'' dated November 1, 2000, as applicable. (Note: The attachment titles are indicated only on the first page of each attachment; no other page contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on February 6, 2001.

Issued in Renton, Washington, on January 9, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1234 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–63–AD; Amendment 39–12083; AD 2000–25–52]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model 369A, H, HE, HM, HS, D, E, FF, and 500N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Emergency Airworthiness Directive (AD) 2000–25–52 which was sent previously to all known U.S. owners and operators of MD Helicopters, Inc. (MDHI) Model 369A, H, HE, HM, HS, D, E, FF, and 500N helicopters. This amendment supersedes an existing emergency AD that requires, before further flight, performing a tap inspection on both the upper and lower surfaces of each main rotor blade (blade). If any voids are detected that exceed specified inspection requirements, the emergency AD also requires replacing the unairworthy blade with an airworthy blade before further flight. This amendment requires the same actions as the emergency AD and corrects the applicability to include the appropriate serial numbers. This amendment is prompted by the discovery of an error in the emergency AD. The actions specified by this AD are intended to prevent failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective February 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2001.

Comments for inclusion in the Rules Docket must be received on or before March 23, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–63–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

The service information referenced in this AD may be obtained from Helicopter Technology Company, LLC, 12923 South Spring St., Los Angeles, CA 90061, telephone (310) 523–2750, fax (310) 523–2745. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On November 21, 2000, the FAA issued Emergency AD 2000–24–51 that applies to MDHI Model 369A, H, HE, HM, HS, D, E, FF, and 500N helicopters and requires, before further flight, performing a tap inspection on both the upper and lower surfaces of each blade. If any voids are detected that exceed specified inspection requirements, this AD requires replacing the unairworthy blade with an airworthy blade before further flight. That action was prompted by a blade failure due to fatigue cracking that originated at corrosion pits on the spar bonded surfaces, resulting in an accident that destroyed a Hughes Model 369D helicopter. That condition, if not corrected, could result in failure of a blade and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA discovered an error in the applicability section. The part numbers are not listed correctly with the appropriate serial numbers and, as a result, the FAA received requests from operators to clarify which blade part numbers are affected since the emergency AD deviates from the applicable service bulletin. The intent of Emergency AD 2000–24–51 was not to deviate from the part numbers and serial numbers listed in the service bulletin. To assure affected blades are correctly identified, the FAA issued superseding Emergency AD 2000–25–52 to correct the applicability. The requirements for accomplishing the intent of the emergency AD remain the same.

The FAA has reviewed Helicopter Technology Company, LLC, Mandatory Service Bulletin No. 2100–2R2, dated November 14, 2000 (SB), which describes procedures for performing a one-time inspection of each blade for skin-to-spar bonding voids before further flight.

Since the unsafe condition described is likely to exist or develop on other MDHI Model 369A, H, HE, HM, HS, D, E, FF, and 500N helicopters of the same type designs, the FAA issued Emergency AD 2000–25–52 to detect a void in the bonding that could result in a crack due to corrosion pits on the blade spar bonded surfaces, failure of a blade, and subsequent loss of control of the helicopter. The AD requires, before further flight, performing a tap inspection on both the upper and lower surfaces of each blade. If any voids are detected that exceed specified inspection requirements, this AD requires replacing the unairworthy blade with an airworthy blade before further flight. The actions must be accomplished in accordance with the SB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the actions listed previously are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 5, 2000, to all known U.S. owners and operators of MDHI Model 369A, H, HE, HM, HS, D, E, FF, and 500N helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 300 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per helicopter to accomplish each inspection and 5 work hours per helicopter to replace 1 blade, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,000 per blade. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,630,000, assuming $12,100 per

helicopter for 10 inspections ($1,800) and one blade replacement ($10,300).

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their mailed 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. 2000–SW–63–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2000–25–52 MD Helicopters, Inc.: Amendment 39–12083. Docket No. 2000–SW–63–AD. Supersedes Emergency AD 2000–24–51, Docket No. 2000–SW–62–AD.

Applicability: Model 369A, H, HE, HM, HS, D, E, FF, and 500N helicopters, with main rotor blade (blade), part number (P/N) 500P2100–BSC (serial number (S/N) with a prefix of ''K'' and 101 through 562); P/N 500P2100–101 or P/N 500P2100–301 (S/N with a prefix of ''A'' and 001 through 999 or S/N with a prefix of ''B'' and 001 through 529); or blade, P/N 500P2300–501 (S/N with a prefix of ''T'' and 101 through 107), manufactured by Helicopter Technology Company, LLC, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 (b) 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 before further flight, unless accomplished previously.

To detect a void in the bonding that could result in a crack due to corrosion pits on the blade spar bonded surfaces, failure of a blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Perform a tap inspection on both the upper and lower surfaces of each blade in accordance with the ''INSPECTION'' paragraph of Helicopter Technology Company, LLC, Mandatory Service Bulletin Notice No. 2100–2R2, dated November 14, 2000 (SB). If any voids on a blade are detected that exceed specified inspection requirements of the SB, replace the unairworthy blade with an airworthy blade before further flight.

(b) 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, Rotorcraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

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

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The tap inspections shall be accomplished in accordance with the ''INSPECTION'' paragraph of Helicopter Technology Company, LLC, Mandatory Service Bulletin Notice No. 2100–2R2, dated November 14, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Helicopter Technology Company, LLC, 12923 South Spring St., Los Angeles, CA 90061, telephone (310) 523–2750, fax (310) 523–2745. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 6, 2001, to all persons except those persons to whom it was made immediately effective by Emergency AD 2000–25–52, issued December 5, 2000, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 10, 2001.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–1586 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–67–AD; Amendment 39–12056; AD 2000–26–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GMBH Model MBB–BK 117 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter Deutschland GMBH (ECD) Model MBB–BK 117 helicopters. That AD currently requires, before further flight, creating a component log card or equivalent record and determining the calendar age and number of flights on each tension-torsion (TT) strap. This amendment establishes a life limit for certain main rotor TT straps. This amendment is prompted by an accident in which a main rotor blade (blade) separated from an ECD Model MBB–BK 117 helicopter due to fatigue failure of a TT strap. The actions specified by this AD are intended to prevent fatigue failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter.

DATES: Effective February 26, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 26, 2001.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–01–11, Amendment 39–11509 (65 FR 2017, January 13, 2000), which applies to ECD Model MBB–BK 117 helicopters, was published in the **Federal Register** on September 18, 2000 (65 FR 56275). That action proposed establishing a life limit for the TT straps of 120 months since installation on any helicopter or 25,000 flights, whichever occurs first.

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

The FAA estimates that 127 helicopters of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,400 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,442,720.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11509 (65 FR 2017, January 13, 2000), and by adding a new airworthiness directive (AD), Amendment 39–12056, to read as follows:

2000–26–06 Eurocopter Deutschland GMBH: Amendment 39–12056. Docket No. 99–SW–67–AD. Supersedes AD 2000–01–11, Amendment 39–11509, Docket No. 99–SW–60–AD.

Applicability: Model MBB–BK 117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 prevent fatigue failure of a tension-torsion (TT) strap, loss of a main rotor blade (blade), and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight,

(1) Remove TT straps, P/N 2604067 (Bendix) or J17322–1 (Lord), from service or re-identify them as P/N 117–14110 or 117–14111, respectively, in accordance with the Accomplishment Instructions, paragraph 2.B.1.2., Eurocopter Deutschland GMBH Alert Service Bulletin MBB–BK–117 No. ASB–MBB–BK 117–10–120, Revision 1, dated August 31, 1999 (ASB). TT straps, P/N 2604067 (Bendix) or J17322–1 (Lord), are no longer eligible for installation.

(2) Create a component log card or equivalent record for each TT strap.

(3) Review the history of the helicopter and each TT strap. Determine the age since initial installation on any helicopter (age) and the number of flights on each TT strap. Enter both the age and the number of flights for each TT strap on the component log card or equivalent record. When the number of flights is unknown, multiply the number of hours time-in-service (TIS) by 5 to determine the number of flights.

(4) Remove any TT strap from service if the total hours TIS or number of flights and age cannot be determined.

(b) Before further flight, remove any TT strap, part number (P/N) 117–14110 or 117–

14111, that has been in service 120 months since initial installation on any helicopter or accumulated 25,000 flights (a flight is a takeoff and a landing). Replace the TT strap with an airworthy TT strap.

(c) This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing a life limit for the TT strap, P/N 117–14110 and 117–14111, of 120 months or 25,000 flights, whichever occurs first.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

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

(f) The modification shall be done in accordance with the Accomplishment Instructions, paragraph 2.B.1.2., Eurocopter Deutschland GMBH Alert Service Bulletin MBB–BK–117 No. ASB–MBB–BK 117–10–120, Revision 1, dated August 31, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 26, 2001.

Note 3: The subject of this AD is addressed in the Luftfahrt Bundesamt (Federal Republic of Germany) AD 1999–284/2, dated September 1, 1999.

Issued in Fort Worth, Texas, on December 15, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–1585 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–03–AD; Amendment 39–12086; AD 2001–02–02]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–200, and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–200, and –300 series airplanes. This action requires repetitive inspections to detect chafing or arcing damage to the cable/wire and fuel tube assemblies on the right hand side of each engine, and replacement with new components, if necessary. This action also provides an optional terminating action for the repetitive inspections required by this AD. This action is necessary to prevent chafing of the cable/wire bundles against the fuel line, which could result in arcing and a consequent fire or explosion. This action is intended to address the identified unsafe condition.

DATES: Effective February 6, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 6, 2001.

Comments for inclusion in the Rules Docket must be received on or before February 21, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–03–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–03–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–200 and –300 series airplanes. TCAA advises that a pinhole in the high pressure fuel line was detected. Investigation revealed that the cause of the pinhole was due to arcing from an adjoining wire. The arcing occurred approximately four inches from the fuel-cooled oil cooler. Although the fuel line and wire are separated by two cushion clamps, the cushion clamps can rotate and thereby allow the wire bundle to chafe against the fuel line. Such chafing of the wire bundles could result in arcing and a consequent fire or explosion.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A8–73–23, dated November 3, 2000, which describes procedures for repetitive general visual inspections to detect chafing or arcing damage to the cable and the fuel tube assemblies on the right hand side of each engine, and replacement with new components, if necessary. The alert service bulletin also describes procedures for an optional modification that entails, among other things, rerouting the existing wire harness to the opposite side of the oil cooler, and shortening and securing the wire harness, if necessary. That modification eliminates the need for the repetitive inspections. TCAA classified this alert service bulletin as mandatory and issued Canadian airworthiness directive CF–2000–33, dated November 14, 2000, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada 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, TCAA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCAA, 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 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, this AD is being issued to prevent chafing of the cable/wire bundles against the fuel line, which could result in arcing and a consequent fire or explosion. This AD requires accomplishment of the repetitive general visual inspections, and replacement, if necessary, in accordance with the inspection and repair procedures specified in the alert service bulletin described previously. This AD also provides an optional terminating action for the repetitive inspections required by this AD.

Interim Action

This is considered to be interim action. The FAA is currently considering superseding this AD to require modification of the cable assembly, which would constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the installation of the modification is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, 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 shall 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the 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 AD 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 Number 2001–NM–03–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2001–02–02 Bombardier, Inc. (Formerly deHavilland, Inc.): Amendment 39–12086. Docket 2001–NM–03–AD.

Applicability: Model DHC–8–201, –202, –301, –311, and –315 airplanes having serial numbers 100 through 552 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 (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 prevent possible arcing between the electrical wiring and the fuel tube, which could result in a fire or explosion, accomplish the following:

Inspection

(a) Within 50 flight hours or 10 days after the effective date of this AD, whichever

occurs first: Do a general visual inspection to detect chafing or arcing damage to the cable and the fuel tube assemblies on the right hand side of each engine, per Bombardier Alert Service Bulletin A8–73–23, dated November 3, 2000. Repeat the inspection every 500 flight hours or 3 months, whichever occurs first.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Repair

(b) If any damage to the fuel tube or cable assembly is detected, before further flight, replace the damaged component per Bombardier Alert Service Bulletin A8–73–23, dated November 3, 2000. Thereafter, repeat the inspection required by paragraph (a) of this AD every 500 flight hours or 3 months, whichever occurs first.

Optional Terminating Action

(c) Accomplishment of the modification instructions described in Bombardier Alert Service Bulletin A8–73–23, dated November 3, 2000, that specifies, among other actions, rerouting the existing wire harness to the opposite side of the oil cooler, constitutes terminating action for the repetitive inspection requirements of this AD.

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, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Bombardier Alert Service Bulletin A8–73–23, dated November 3, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–33, dated November 14, 2000.

Effective Date

(g) This amendment becomes effective on February 6, 2001.

Issued in Renton, Washington, on January 12, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1659 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–20]

RIN 2120–AA66

Amend Legal Description of Jet Route J–501

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on November 20, 2000. The legal description of Jet Route 501 (J–501) contained an inadvertent error that included the intersection of the Bethel 258° radial and the Anchorage CTA/FIR boundary. This action corrects that error by removing the reference to the intersection.

EFFECTIVE DATE: 0901 UTC, January 25, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On November 20, 2000, Airspace Docket No. 00–ANM–20 (65 FR 69664), was published amending the legal description of J–501. This description contained an inadvertent error that included the intersection of the Bethel 258° radial and the Anchorage CTA/FIR boundary. This action corrects that error by removing the reference to the intersection.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for J–501, as published in the **Federal Register** on November 20, 2000, (65 FR 69664), and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 69665, correct the legal description of J–501, to read as follows:

Paragraph 2004—Jet Routes

* * * * *

J–501 [Amended]

From San Marcus, CA, via Big Sur, CA; Point Reyes, CA, via Rogue Valley, OR; Hoquiam, WA; INT Hoquiam 354° and Tatoosh, WA, 162° radials; Tatoosh; Tofino, BC, Canada, RBN. From Sandspit, BC, Canada; Biorka Island, AK; Yakutat, AK; Johnstone Point, AK; Anchorage, AK; Sparrevohn, AK; Bethel, AK; excluding the airspace within Canada.

* * * * *

Issued in Washington, DC, on January 10, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–1853 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–14]

Establishment of Class E Airspace, Prineville, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Prineville, OR, Class E airspace to accommodate airspace required for the establishment of a new Standard Instrument Approach Procedure (SIAP) to the Prineville Airport, Prineville, OR.

EFFECTIVE DATE: February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–14, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 16, 2000, the FAA proposed to amend Title 14 Code of

Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Prineville, OR, in order to accommodate a new Area Navigation (RNAV) SIAP to Runway 10, RNAV RWY 28, and Non-Directional Beacon (NDB) RWY 10 SIAP at Prineville Airport, Prineville, OR (65 FR 200). This amendment provides Class E5 airspace at Prineville, OR, to meet current criteria standards associated with the SIAPs. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) establishes Class E airspace at Prineville, OR, in order to accommodate a new SIAPs to the Prineville Airport, Prineville, OR. This amendment establishes Class E5 airspace at Prineville, OR, to meet current criteria standards associated with the SIAPs. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Prineville Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. 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 7400.9H dated September 1, 2000, and effective September 16, 2000, 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 FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ANM OR E5 Prineville, OR [New]

Prineville Airport, OR
(lat. 44°17′13″N., long. 120°54′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the airport, and 3.5 miles each side of the 283° bearing from the airport extending to 12.2 miles, and 3 miles each side of the 121° bearing from the airport extending to 7.2 miles; that airspace extending upward from 1,200 feet above the surface within a 9.2-miles radius of the airport clockwise from the 320° bearing to the 190° bearing, then extending to 27.4 miles from the airport in an arc clockwise to the 230° bearing, then extending to 37.5 miles from the airport in an arc clockwise to the 320° bearing, then extending 6.8 miles each side of the 121° bearing from the airport to 34.3 miles; excluding that airspace within Federal Airways; the Redmond, OR Class D and E airspace.

* * * * *

Issued in Seattle, Washington, on January 8, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–1672 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–21]

Modification of Class E Airspace, Astoria, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Astoria, OR, Class E airspace to accommodate airspace required to support military operations at the Oregon Air National Guard (ORANG) Camp Rilea Heliport, Astoria, OR.

EFFECTIVE DATE: February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–21, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 16, 2000, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Astoria, OR, in order to support military operations at the Oregon Air National Guard (ORANG) Camp Rilea Heliport, Astoria, OR (65 FR 200). this amendment modifies Class E2 airspace at Astoria, OR, to allow less restrictive military air operations to and from Camp Rilea Heliport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) modifies Class E airspace at Astoria, OR, in order to allow the ORANG to conduct air operations at Camp Rilea without impacting civil air traffic, and to provide a less restrictive environment for military air operations to and from Camp Rilea Heliport, Astoria, OR. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) at the Port of Astoria Airport and Camp Rilea Heliport, and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface area for an airport, are published in Paragraph 6002, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, 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 FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6002 Class E airspace areas designated as surface area for an airport

* * * * *

ANM OR E2 Astoria, OR [Revised]

Astoria, Port of Astoria Airport, OR
(lat. 46°09′28″N, long. 123°52′44″W)
Astoria VOR/DME
(lat. 46°09′42″N, long. 123°52′50″W)
Karpen NDB
(lat. 46°08′22″n, long. 123°35′14″W)
Astoria ILS Localizer
(lat. 46°09′35″N, long. 123°53′28″W)
Camp Rilea Heliport
(lat. 46°06′59″N, long. 123°55′54″W)

Within a 4-mile radius of the Port of Astoria Airport, and within 1.8 miles each side of the Astoria VOR/DME 268° radial extending from the 4-mile radius to 7 miles west of the VOR/DME, and within 1.8 miles each side of the Astoria ILS localizer east course extending from the 4-mile radius to the Karpen NDB, excluding the airspace within a wedge south of Camp Rilea Heliport, from the 120 bearing clockwise to the 225 bearing of the Camp Rilea Heliport.

* * * * *

Issued in Seattle, Washington, on January 8, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–1673 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–16]

Modification of Class E Airspace, Tillamook, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Tillamook, OR, Class E airspace to accommodate airspace required to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tillamook Airport, Tillamook, OR, and to support a Terminal Arrival Area (TAA) airspace design.

EFFECTIVE DATE: February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–16, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On November 13, 2000, the FAA proposed to amend title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Tillamook, OR, in order to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tillamook Airport, Tillamook, OR (65 FR 219). This amendment modifies Class E5 airspace at Tillamook, OR, to provide adequate Class E 700 feet, and 1,200 feet controlled airspace, above the surface of the earth required to contain aircraft executing the RNAV RWY 13 Standard Instrument Approach Procedure (SIAP) with a Terminal Arrival Area (TAA) design to Tillamook Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Tillamook Airport, Tillamook, OR. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revises Class E airspace at Tillamook, OR, in order to accommodate a new SIAP to the Tillamook Airport, Tillamook, OR. This amendment revises Class E5 airspace at Tillamook, OR, to meet current criteria standards associated with the RNAV RWY 13 SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Tillamook Airport and between the terminal and transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. 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 7400.9H dated September 1, 2000, and effective September 11s incorporated by reference in 14 CFR 7.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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 Regulator Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is

so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ANM OR E5 Tillamook, OR [Revised] (lat. 45°25′07″N., long. 123°48′49″W.)

That airspace extending upward from 700 feet above the surface within the 7.5-mile radius of the Tillamook Airport, and within 2.5 miles each side of the 334° bearing from the airport extending 13.8 miles; and that airspace extending upward from 1,200 feet above the surface within the 30 mile radius of lat. 45°37′05″N., long. 123°56′36″W., extending clockwise from the 246° bearing to the 064° bearing, and within the 30 miles radius of lat. 45°39′57″N., long 123°47′30″W., extending clockwise from the 064° bearing to the 154° bearing of lat. 45°37′05″N., long. 123°56′36″W., and within the 30 miles radius of lat. 45°34′11″N., 124°05′41″W., extending counterclockwise from the 244° bearing to the 154° bearing of lat. 45°37′05″N., long. 123°56′36″ W.; and excluding that airspace that extends more than 12 miles west of the U.S. shoreline; that airspace within Federal airways; the Astoria, OR; the Portland-Hillsboro, OR; and the Portland, OR, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on January 8, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–1855 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 335 and 340

[Doc. #001229368–0368–01]

RIN 0625–AA58

Imports of Certain Worsted Wool Fabric; Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Interim Final Rule; Request for Comments.

SUMMARY: The Department of Commerce is issuing interim regulations implementing Section 501(e) and Section 504(b) of the Trade and Development Act of 2000 (''the Act''). Section 501(e) requires the President to fairly allocate tariff rate quotas on the import of certain worsted wool fabrics, tariff rate quotas which were established by Sections 501(a) and 501(b) of the Act. Section 504(b) authorizes the President to modify the limitations on worsted wool fabric imports under the tariff rate quotas. The President has delegated to the Secretary of Commerce the authority to allocate the quantity of imports under the tariff rate quotas and to determine whether the limitations on the quantity of imports under the tariff rate quotas should be modified.

DATES: This interim final rule is effective January 22, 2001. To be considered, written comments must be received by 5:00 p.m. on March 23, 2001.

ADDRESSES: Comments should be addressed to: Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

Background

The Act creates two tariff rate quotas, providing for temporary reductions for three years in the import duties on two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (new Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11), the reduction in duty is limited to 2,500,000 square meter equivalents or such other quantity proclaimed by the President; and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (new HTS heading 9902.51.12), the reduction is limited to 1,500,000 square meter equivalents or such other quantity proclaimed by the President.

The Act requires that the tariff rate quotas be allocated. More specifically, the President must ensure that the tariff rate quotas are fairly allocated to persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year.

The Act requires that the President annually consider requests by U.S. manufacturers of certain worsted wool apparel to modify the limitation on the quantity of fabric that may be imported under the tariff rate quotas, and grants the President the authority to proclaim modifications to the limitations. In determining whether to modify the limitations, the President must consider specified U.S. market conditions with respect to worsted wool fabric and worsted wool apparel.

In Presidential Proclamation 7383, of December 1, 2000, the President authorized the Secretary of Commerce: (1) to allocate the imports of worsted wool fabrics under the tariff rate quotas; (2) to annually consider requests from domestic manufacturers of worsted wool apparel to modify the limitation on the quantity of worsted wool fabrics that may be imported under the tariff rate quotas; (3) to determine whether the limitations on the quantity of imports of worsted wool fabrics under the tariff rate quotas should be modified and to recommend to the President that appropriate modifications be made; and (4) to issue regulations to implement relevant provisions of the Act.

The Presidential Proclamation authorizing the Department of Commerce to issue regulations to implement these provisions was issued on December 1, 2000. Pursuant to the Act, the tariff rate quotas entered into force on January 1, 2001. Thus, there is good cause to find that in order to meet

the statutory implementation date and to ensure that importers receive the benefit of the reduction in tariff rate as soon as possible, the otherwise applicable notice and comment procedures are impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B). Moreover, for the same reason, there is good cause to find that the effective date of this rule should not be delayed until 30 days after its publication under 5 U.S.C. 553(d)(3). While these interim regulations will be effective upon publication, the Department of Commerce hereby solicits comments on these interim regulations and will amend them in final regulations if appropriate. The Department is particularly interested in comments concerning any impact these regulations might have on small or medium sized businesses.

This interim rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). These information collection requirements cannot be implemented until they have received PRA approval from the Office of Management and Budget (OMB); a request for approval on an emergency basis is pending, and when approval is provided, notice will be published in the **Federal Register**. In addition, the collection will be submitted to OMB for permanent approval under the PRA. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The information collected will be used by the Department to allocate the tariff rate quota among U.S. manufacturers and to determine whether the tariff rate quota limitations should be modified. Responses to the collection of information are required for a manufacturer to receive an allocation of the tariff rate quota, to submit a request for a modification, and to comment on such a request. Confidentiality of information will be handled in accordance with §§ 335.3(e) and 340.5(b). Records substantiating information provided in an application to receive an allocation must be retained. It is estimated that the annual public burden for the collection will average: (1) seven hours per application for an allocation of a tariff rate quota; (2) one hour per application for a reallocation; (3) 24 hours per request for a modification of a limitation on the tariff rate quotas; and (4) 24 hours for comments on such a request. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Washington, DC, 20503 (Attention: ITA Desk Officer).

Part 335

Section 501(e) of the Act requires that the worsted wool fabrics imported under the tariff rate quotas be ''fairly allocated'' to persons ''who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States and who apply for an allocation based on the amount of such suits cut and sewn during the prior calendar year.'' As the Joint Explanation of the Committee of Conference (''Conference Report'') makes clear, Congress intended the tariff rate quotas to address the duty situation faced by U.S. wool suit manufacturers, in which worsted wool fabric is subject to considerably higher duties than worsted wool suits, a situation compounded by reductions in tariffs on wool suits under free trade agreements with Canada and Mexico.

The Department, promptly upon promulgation of these interim regulations, intends to begin the process of soliciting applications for a license for an allocation of the 2001 tariff rate quotas on worsted wool fabrics. In following years, applications will be solicited on or around August 31, in order to allow companies to be informed of their allocation as early as possible while still allowing an allocation based on previous year production. The Department intends to make its determination regarding the allocation on or about November 1 and to issue licenses no later than December 31 of the year preceding the tariff rate quota year.

Each of the two tariff rate quotas will be allocated based on previous year production utilizing the worsted wool fabric that is the subject of the tariff rate quota. That is, the tariff rate quota on worsted wool fabric with average fiber diameters greater than 18.5 microns (HTS 9902.51.11) will be allocated based on production utilizing this type of worsted wool fabric, while the tariff rate quota on worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS 9902.51.12) will be allocated based on production utilizing this type of worsted wool.

In 2000, in tracking purchases of worsted wool fabric and production of worsted wool apparel, most manufacturers did not maintain records regarding the micron count of the worsted wool fabric. Therefore, it is necessary to provide an alternative method for manufacturers to report 2000 production information in order to fairly allocate the two tariff rate quotas. For purposes of reporting 2000 production, the interim regulations permit manufacturers to estimate the micron count of the worsted wool fabric used in production based on the value of the worsted wool fabric used, as value is the best proxy for micron count. The regulations provide values to be used to report estimated 2000 production if micron count is not available.

For reporting subsequent year production information, applicants will be required to report production based on micron count of the worsted wool fabric, and in order to receive an allocation of the 2002 tariff rate quotas, manufacturers must begin tracking purchases and production utilizing micron count no later than January 1, 2001. In order to utilize micron count for purposes of allocating the 2002 tariff rate quotas, to utilize the most current data possible for all years, and to meet the statutory requirement that the allocation be based on production during the prior calendar year, each tariff rate quota will be allocated based on production during the first six months of the previous calendar year, annualized.

Pursuant to the statutory requirement, allocation will be limited to persons who cut and sew three types of garments during the calendar year of the application: (1) men's and boys' worsted wool suits; (2) men's and boys' worsted wool suit-type jackets; and (3) men's and boys' worsted wool trousers. Only manufacturers of all three types of garments will be eligible for an allocation. Pursuant to the statutory requirement that allocation be based on the men's and boys' worsted wool suits cut and sewn during the prior calendar year, in allocating the tariff rate quotas, only production of men's and boys' worsted wool suits will be considered. To be considered, a worsted wool garment must contain at least 85 percent by weight worsted wool, which is consistent with the definitions of wool fiber and fabric in the Act and the Conference Report.

In order to fairly allocate the tariff rate quotas, manufacturers that utilize imported worsted wool fabric in production will be provided a greater allocation than manufacturers that utilize domestic worsted wool fabric.

This will allow the manufacturers that will actually use the imported fabric that is subject to the tariff rate quotas to obtain a relatively greater share of the fabric, as compared to manufacturers that use only domestic fabric. For the purpose of calculating allocations, suit production will be increased by the ratio of imported fabric used to total fabric used in the production of men's and boys' suits. For example, if an applicant uses imported fabric for 30 percent of its worsted wool suits production, that applicant's suit production level will be increased by 30 percent for purposes of calculating the applicant's allocation.

In order to ensure that the tariff rate quotas are fully utilized, a licensee that will not import the full quantity allocated to it is required to surrender the unused allocation to the Department for reallocation. The quantity surrendered will be reallocated to licensees that apply for a reallocation on the same basis as the original allocation. A licensee that does not surrender unused allocation and fails to import at least 95 percent of the quantity allocated will be penalized in the subsequent year by a reduction in its allocation proportionate to the amount unused.

Part 340

Section 504(b) of the Act requires the President to consider, on an annual basis, requests by U.S. manufacturers of certain worsted wool apparel to modify the limit on importation under the tariff rate quotas. As the Act requires the consideration of such requests ''on an annual basis,'' the first petition process, for the modification of the 2001 tariff rate quotas, will take place promptly, and a petition process will take place for each subsequent year the tariff rate quotas are in effect. Each year, the Department will cause to be published in the **Federal Register** a notice soliciting requests by U.S. manufacturers for modification of the limit for the following year. The Department will then cause to be published in the **Federal Register** a notice soliciting comments by any interested person, including U.S. manufacturers of worsted wool fabric, wool yarn, wool top and wool fiber, regarding the requested modification or modifications. In order to allow manufacturers and other interested persons to submit the most current data possible and to allow the Department to make its determination prior to January 1, manufacturers will have 15 days to submit a request and interested persons will have 20 days to submit comments.

Within 30 days of the end of the period for receiving public comments regarding requested modification or modifications, the Department will make a determination whether the limitations should be modified and recommend to the President that appropriate modification be made. The determination and recommendation will be based on the U.S. market conditions, particularly those factors set forth in the Act.

Dated: January 17, 2001.

Norman Y. Mineta,

Secretary, United States Department of Commerce.

List of Subjects

15 CFR Part 335

Imports, Quotas, Reporting and Recordkeeping, Tariffs, Textiles.

15 CFR Part 340

Imports, Quotas, Reporting and Recordkeeping, Tariffs, Textiles.

For the reasons stated in the preamble, 15 CFR Parts 335 and 340 are added to state as follows:

PART 335—IMPORTS OF WORSTED WOOL FABRIC

Sec.

335.1 Purpose.
335.2 Definitions.
335.3 Applications to receive allocation.
335.4 Allocation.
335.5 Licenses.
335.6 Surrender, reallocation and license utilization requirement.
335.7 Modifications of the limitation.

Authority: Title V Pub. L. 106–200, 114 Stat. 299; Presidential Proclamation 7383 (December 1, 2000).

§ 335.1 Purpose.

This part sets forth regulations regarding the issuance and effect of licenses for the allocation of Worsted Wool Fabric under the Tariff Rate Quotas established by Section 501 of the Act.

§ 335.2 Definitions.

For purposes of these regulations and the forms used to implement them:

The Act means the Trade and Development Act of 2000 (Public Law No. 106–200, 114 Stat 251).

The Department means the United States Department of Commerce.

HTS means the Harmonized Tariff Schedule of the United States.

Imports subject to Tariff Rate Quotas are defined by date of presentation as defined in 19 CFR 132.1(d) and 19 CFR 132.11(a).

Licensee means an applicant for an allocation of the Tariff Rate Quotas that receives an allocation and a license.

Production means cutting and sewing garments in the United States.

Tariff Rate Quota or Quotas means the temporary duty reduction provided under Section 501 of the Act for limited quantities of fabrics of worsted wool with average diameters greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.11), and for limited quantities of fabrics of worsted wool with average diameters of 18.5 microns or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.12).

Tariff Rate Quota Year means a calendar year for which the Tariff Rate Quotas are in effect.

Worsted Wool Fabric means fabric containing at least 85 percent by weight worsted wool.

Worsted Wool Suits means men's and boys' worsted wool suits, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Suit-Type Jackets mean men's and boys' worsted wool suit-type jackets, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Trousers means men's and boys' worsted wool trousers, containing at least 85 percent by weight worsted wool fabric.

§ 335.3 Applications to receive allocation.

(a) In each year prior to a Tariff Rate Quota Year, the Department will cause to be published a **Federal Register** notice soliciting applications to receive an allocation of the Tariff Rate Quotas.

(b) An application for a Tariff Rate Quota allocation must be received, or postmarked by the U.S. Postal Service, within 30 calendar days after the date of publication of the **Federal Register** notice soliciting applications.

(c) During the calendar year of the date of the application, an applicant must have cut and sewed in the United States all three of the following apparel products: Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers. The applicant may either have cut and sewn these products on its own behalf or had another person cut and sew the products on the applicant's behalf, provided the applicant owned the fabric at the time it was cut and sewn. The application must contain a statement to this effect.

(d) An applicant must provide the following information in the format set forth in the application form provided by the Department:

(1) *Identification.* Applicant's name, address, telephone number, fax number, and federal tax identification number; name of person submitting the application, and title, or capacity in

which the person is acting for the applicant.

(2) *Production.* Name and address of each plant or location where Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers were cut and sewn by the applicant and the name and address of all plants or locations that cut and sewed such products on behalf of the applicant. Production data, including the following: the quantity and value of the Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers cut and sewn in the United States by applicant, or on behalf of applicant, from fabric owned by applicant. This data must indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers containing at least 85 percent worsted wool fabric by weight with an average diameter of 18.5 microns or less. This data must also indicate actual production (not estimates) of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers containing at least 85 percent worsted wool fabric by weight with average diameter greater than 18.5 microns. Production data must be provided for the first six months of the year of the application. This data will be annualized for the purpose of making Tariff Rate Quota allocations.

(3) *2000 Production Data.* For applications for the 2001 Tariff Rate Quota Year, if production data is not available by micron count, the following method of estimating micron count will be accepted: To estimate production of Worsted Wool Suits, Worsted Wool Suit-Type Jackets and Worsted Wool Trousers made from worsted wool fabric with average diameter 18.5 microns or less, use a value of $8.50 per square meter (f.o.b. plant) or more for such garments made from domestic fabric and $12.50 per square meter (c.i.f. duty paid landed value) or more for such garments made from imported fabric. To estimate production of such garments made from worsted wool fabric with average diameter greater than 18.5 microns, use a value of less than $8.50 per square meter (f.o.b. plant) for such garments made from domestic fabric and less than $12.50 (c.i.f. duty paid landed value) per square meter for such garments made from imported fabric.

(4) *Worsted Wool Fabric.* Data indicating the quantity and value of the Worsted Wool Fabric used in reported production.

(5) *Certification.* A statement by the applicant (if a natural person), or on behalf of applicant, by an employee, officer or agent, with personal knowledge of the matters set out in the application, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

(e) *Confidentiality.* Any business confidential information provided pursuant to this section that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

(f) *Record Retention:* The applicant shall retain records substantiating the information provided in § 335.3(d)(2), (3), and (4) for a period of 3 years and the records must be made available upon request by an appropriate U.S. government official.

§ 335.4 Allocation.

(a) Each Tariff Rate Quota (HTS 9902.51.11 and HTS 9902.51.12) will be allocated separately. Allocation will be based on an applicant's Worsted Wool Suit production, on a weighted average basis, and the proportion of imported Worsted Wool Fabric consumed in the production of Worsted Wool Suits.

(b) For the purpose of calculating allocations, Worsted Wool Suit production will be increased by the percentage of imported fabric consumed in the production of Worsted Wool Suits to total fabric consumed in this production. For example, if an applicant uses 30 percent imported fabric in the production of Worsted Wool Suits, that applicant's production level will be increased by 30 percent.

(c) The Department will cause to be published in the **Federal Register** its determination to allocate the Tariff Rate Quotas and will notify applicants of their respective allocation as soon as possible. Promptly thereafter, the Department will issue licenses.

§ 335.5 Licenses.

(a) Each Licensee will receive a license, which will include a unique control number. The license is subject to the surrender and reallocation provisions in § 335.6.

(b) A license may be exercised only for fabric entered for consumption, or withdrawn from warehouse for consumption, during the Tariff Rate Quota Year specified in the license. A license will be debited on the basis of date of entry for consumption or withdrawal from warehouse for consumption.

(c) A Licensee may import fabric certified by the importer as suitable for use in making suits, suit-type jackets, or trousers under the appropriate Tariff Rate Quota as specified in the license (*i.e.,* under the Tariff Rate Quota for fabric of worsted wool with average fiber diameters greater than 18.5 micron or the Tariff Rate Quota for fabric of worsted wool with average fiber diameters of 18.5 micron or less) up to the quantity specified in the license subject to the Tariff Rate Quota duty rate. Only a Licensee or an importer authorized by a Licensee will be permitted to import fabric under the Tariff Rate Quotas and to receive the Tariff Rate Quota duty rate.

(d) The term of a license shall be the Tariff Rate Quota Year for which it is issued. Fabric may be entered or withdrawn from warehouse for consumption under a license only during the term of that license. The license cannot be used for fabric entered or withdrawn from warehouse for consumption after December 31 of the year of the term of the license.

(e) The importer of record of fabric entered or withdrawn from warehouse for consumption under a license must be the Licensee or an importer authorized by the Licensee to act on its behalf. If the importer of record is the Licensee, the importer must possess the license at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501).

(f) A Licensee may only authorize an importer to import fabric under the license on its behalf by making such an authorization in writing or by electronic notice to the importer and providing a copy of such authorization to the Department. A Licensee may only withdraw authorization from an importer by notifying the importer, in writing or by electronic notice, and providing a copy to the Department.

(g) The written authorization must include the unique number of the license, must specifically cover the type of fabric imported, and must be in the possession of the importer at the time of filing the entry summary or warehouse withdrawal for consumption (Customs Form 7501), or its electronic equivalent, in order for the importer to obtain the applicable Tariff Rate Quota duty rate.

(h) It is the responsibility of the Licensee to safeguard the use of the license issued. The Department and the U.S. Customs Service will not be liable for any unauthorized or improper use of the license.

§ 335.6 Surrender, reallocation and license utilization requirement.

(a) Not later than September 30 of each Tariff Rate Quota Year, a Licensee that will not import the full quantity

granted in a license during the Tariff Rate Quota Year shall surrender the allocation that will not be used to the Department for purposes of reallocation through a written or electronic notice to the Department, including the license control number and the amount being surrendered. The surrender shall be final, and shall apply only to that Tariff Rate Quota Year.

(b) For purposes of this section, ''unused allocation'' means the amount by which the quantity set forth in a license, including any additional amount received pursuant to paragraph (d) of this section, exceeds the quantity entered under the license, excluding any amount surrendered pursuant to paragraph (a) of this section.

(c) The Department will notify Licensees of any amount surrendered and the application period for requests for reallocation. A Licensee that has imported, or intends to import, a quantity of Worsted Wool Fabric exceeding the quantity set forth in its license may apply to receive additional allocation from the amount to be reallocated. The application shall state the maximum amount of additional allocation the applicant will be able to use.

(d) The amount surrendered will be reallocated to Licensees that have applied for reallocation. The entire amount surrendered will be reallocated pro-rata among applicants based on the applicant's share of the annual allocation, but will not exceed the amount set forth in the reallocation application as the maximum amount able to be used.

(e) A Licensee whose unused allocation in a Tariff Rate Quota Year exceeds five percent of the quantity set forth in its license shall be subject to having its allocation reduced in the subsequent Tariff Rate Quota Year. The subsequent Tariff Rate Quota Year allocation will be reduced from the quantity such Licensee would otherwise have received by a quantity equal to 25 percent of its unused allocation from the prior year. A Licensee whose unused allocation in two consecutive Tariff Rate Quota Years exceeds five percent of the quantity set forth in its license shall have its allocation reduced in the subsequent Tariff Rate Quota Year by a quantity equal to 50 percent of its unused allocation from the prior year.

(f) No penalty will be imposed under paragraph (e) of this section if the Licensee demonstrates to the satisfaction of the Department that the unused allocation resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the fabric, act of God, or force majeure.

§ 335.7 Modifications of the Limitation.

In the event the limitation on the quantity of imports of Worsted Wool Fabric under the Tariff Rate Quotas is increased, the increase will be allocated on the same basis as the rest of the Tariff Rate Quotas. Licenses will be issued or adjusted accordingly.

PART 340—MODIFICATION OF THE TARIFF RATE QUOTA LIMITATION ON WORSTED WOOL FABRIC IMPORTS

Sec.

340.1 Purpose.
340.2 Definitions.
340.3 Requests for modification.
340.4 Comments regarding requested modification.
340.5 Requests for modification and comments.
340.6 Requests for additional information.
340.7 Determination.

Authority: Pub. L. 106–200, 114 Stat. 299; Presidential Proclamation 7383 (December 1, 2000).

§ 340.1 Purpose.

This part sets forth regulations regarding the procedures for considering requests to modify the limitations on the quantity of imports of fabrics of worsted wool under the Tariff Rate Quotas established by Section 501 of the Act. Section 504 of the Act requires annual consideration of such requests made by U.S. manufacturers of certain apparel products made of Worsted Wool Fabrics and grants the authority to modify the limitations.

§ 340.2 Definitions.

For purposes of these regulations and the forms used to implement them:

The Act means the Trade and Development Act of 2000 (Public Law No. 106–200, 114 Stat 251).

The Department means the United States Department of Commerce.

HTS means the Harmonized Tariff Schedule of the United States.

Imports subject to Tariff Rate Quotas are defined by date of presentation as defined in 19 CFR 132.1(d) and 19 CFR 132.11(a).

Production means cutting and sewing garments in the United States.

Tariff Rate Quota or Quotas means the temporary duty reduction provided under Section 501 of the Act for limited quantities of fabrics of worsted wool with average diameters greater than 18.5 micron, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.11), and for limited quantities of fabrics of worsted wool with average diameters of 18.5 microns or less, certified by the importer as suitable for use in making suits, suit-type jackets, or trousers (HTS heading 9902.51.12).

Tariff Rate Quota Year means a calendar year for which the Tariff Rate Quotas are in effect.

Worsted Wool Fabric means fabric containing at least 85 percent by weight worsted wool.

Worsted Wool Suits means men's and boys' worsted wool suits, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Suit-Type Jackets mean men's and boys' worsted wool suit-type jackets, containing at least 85 percent by weight worsted wool fabric.

Worsted Wool Trousers means men's and boys' worsted wool trousers, containing at least 85 percent by weight worsted wool fabric.

§ 340.3 Requests for Modification.

(a) On an annual basis, the Department will cause to be published a **Federal Register** notice soliciting requests from U.S. manufacturers of Worsted Wool Suits, Worsted Wool Suit-Type Jackets, and Worsted Wool Trousers to modify the limitations on the quantity of imports of fabrics of worsted wool under the Tariff Rate Quotas. Requests must be received, or postmarked, on a date no later than 15 calendar days after the date of the **Federal Register** notice.

(b) A request shall include:

(1) The name, address, telephone number, fax number, and Internal Revenue Service number of the requester;

(2) The relevant worsted wool apparel product(s) manufactured by the person(s), that is, Worsted Wool Suits, Worsted Wool Suit-Type Jackets, or Worsted Wool Trousers;

(3) The modification requested, including the amount of the modification and the limitation that is the subject of the request (HTS heading 9902.51.11 and/or 9902.51.12); and

(4) A statement of the basis for the request, including all relevant facts and circumstances.

(c) A request should include the following information for each limitation that is the subject of the request, to the extent available:

(1) A list of suppliers from which the requester purchased domestically produced Worsted Wool Fabric during the 12 months preceding the request, the dates of such purchases, the quantity purchased, the quantity of imported Worsted Wool Fabric purchased, the countries of origin of the imported Worsted Wool Fabric purchased, the average price paid per square meter of the domestically

produced Worsted Wool Fabric purchased, and the average price paid per square meter of the imported Worsted Wool Fabric purchased;

(2) A list of domestic Worsted Wool Fabric producers that declined, on request, to sell Worsted Wool Fabric to the requester during the 12 months preceding the request, indicating the product requested, the date of the order, the price quoted, and the reason for the refusal;

(3) The requester's domestic production and sales for the most recent six month period for which such data is available and the comparable six month period in the previous year, for each of the following products: Worsted Wool Suits, Worsted Wool Suit-Type Jackets, or Worsted Wool Trousers;

(4) Evidence that the requester lost production or sales due to an inadequate supply of domestically-produced Worsted Wool Fabric on a cost competitive basis; and

(5) Other evidence of the inability of domestic producers of Worsted Wool Fabric to supply domestically produced Worsted Wool Fabric to the requester.

§ 340.4 Comments regarding requested modification.

(a) If the Department receives a request or requests from a U.S. manufacturer under § 340.3, the Department will cause to be published in the **Federal Register** a notice summarizing the request or requests and soliciting comments from any interested person, including U.S. manufacturers of Worsted Wool Fabric, wool yarn, wool top and wool fiber, regarding the requested modification. Comments must be received, or postmarked, on a date not later than 20 calendar days after the date of the **Federal Register** notice.

(b) If the person submitting comments is a domestic producer of Worsted Wool Fabric, comments should include, to the extent available, the following information for each limitation with respect to which comments are being made:

(1) A list of domestic manufacturers of Worsted Wool Suits, Suit-Type Jackets, or Trousers for whom orders were filled during the twelve months prior to the submission of the comments, the date of such orders, the total quantity ordered and supplied in square meters of domestically produced Worsted Wool Fabric and of imported Worsted Wool Fabric, and the average price received per square meter of domestically produced Worsted Wool Fabric and of imported Worsted Wool Fabric for such orders.

(2) A list of all requests to purchase Worsted Wool Fabric during the twelve months prior to the submission of the comments that were rejected by the person submitting the comments, indicating the dates of the requests, the quantity requested, the price quoted, and the reasons why the request was rejected;

(3) Data indicating increase and/or decrease in production and sales for the most recent six month period for which data is available and the comparable six month period in the previous year of domestically-produced Worsted Wool Fabrics used in the production of Worsted Wool Suits, Suit-Type Jackets and Trousers.

(4) Evidence of lost sales due to the temporary duty reductions on certain Worsted Wool Fabric under the Tariff Rate Quotas; and

(5) Other evidence of the ability of domestic producers of Worsted Wool Fabric to meet the needs of the manufacturers of Worsted Wool Suits, Suit-Type Jackets and Trousers in terms of quantity, variety, and other relevant factors.

§ 340.5 Requests for modification and comments.

(a) Requests for modification and comments must be accompanied by a statement by the person submitting the request or comments (if a natural person), or an employee, officer or agent of the legal entity submitting the request or comments, with personal knowledge of the matters set forth therein, certifying that the information contained therein is complete and accurate, signed and sworn before a Notary Public, and acknowledging that false representations to a federal agency may result in criminal penalties under federal law.

(b) Any business confidential information provided pursuant to this section that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. To the extent business confidential information is provided, a non-confidential submission shall also be provided, in which business confidential information is summarized or, if necessary, deleted.

§ 340.6 Requests for additional information.

The Department may request additional information from any manufacturer of Worsted Wool Suits, Suit-Type Jackets and Trousers, or manufacturer of Worsted Wool Fabric, wool yarn and wool top and fiber concerning information relevant to modifying the limitations.

§ 340.7 Determination.

(a) Based on information obtained, including information on market conditions obtained pursuant to the monitoring required under Section 504(a) of the Act, the Department shall consider the following United States market conditions as required by Section 504(b)(2) of the Act:

(1) Increases or decreases in sales of the domestically-produced Worsted Wool Fabrics used in the manufacture of Worsted Wool Suits, Suit-Type Jackets and Trousers;

(2) Increases or decreases in domestic production of such Worsted Wool Fabrics;

(3) Increases or decreases in domestic production and consumption of Worsted Wool Suits, Suit-Type Jackets and Trousers;

(4) The ability of domestic producers of Worsted Wool Fabrics to meet the needs of domestic manufacturers of Worsted Wool Suits, Suit-Type Jackets and Trousers in terms of quantity and the ability to meet market demands for the apparel items;

(5) Evidence that domestic manufacturers of Worsted Wool Fabrics used in the manufacture of Worsted Wool Suits, Suit-Type Jackets and Trousers have lost sales due to the temporary duty reductions on certain fabrics of worsted wool under the Tariff Rate Quota;

(6) Evidence that domestic manufacturers of Worsted Wool Suits, Suit-Type Jackets and Trousers have lost sales due to the inability to purchase adequate supplies of worsted wool fabrics on a cost competitive basis; and

(7) Price per square meter of imports and domestic sales of Worsted Wool Fabrics.

(b) Not later than 30 calendar days after the end of the comment period provided for in § 340.4(a), and on the basis of its consideration of the market conditions set forth in paragraph (a) of this section and other relevant factors, and using the facts available, the Department will determine whether the limitations on the quantity of imports under the Tariff Rate Quotas should be modified and recommend to the President that appropriate modifications be made. Consistent with section 504(b)(3)(B) of the Act, such modification shall not exceed 1,000,000 square meter equivalents for each of the Tariff Rate Quotas.

[FR Doc. 01–1949 Filed 1–18–01; 1:51 pm]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740 and 748

[Docket No. 010112014–1014–01]

RIN 0694–AC41

Implementation of Presidential Announcement of January 10, 2001: Revisions to License Exception CTP; Corrections

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On January 19, 2001 the Bureau of Export Administration (BXA) published a final rule revising License Exception CTP. This rule corrects inadvertent citation references in the January 19 rule.

DATES: This rule is effective January 19, 2001.

FOR FURTHER INFORMATION CONTACT: Sharron Cook in the Office of Exporter Services, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 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 involves collections previously approved by the Office of Management and Budget under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Information is also collected under OMB control number 0694–0107, ''National Defense Authorization Act,'' Advance Notifications and Post-Shipment Verification Reports, which carries a burden hour estimate of 15 minutes per report. This rule also involves collections of information under OMB control number 0694–0073, ''Export Controls of High Performance Computers'' and OMB control number 0694–0093, ''Import Certificates and End-User Certificates.''

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, 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 requires that a notice of proposed rule making 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 Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 740 and 748

Administrative practice and procedure, Exports, Foreign trade, Reporting and record keeping requirements.

Accordingly, parts 740 and 748 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR Part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

2. The authority citation for part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; Pub. L. No. 106–508; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

PART 740—CORRECTED

3. Part 740 is corrected by revising the phrase ''paragraph (d)(2)'' to read ''paragraphs (d)(5)(i)(A) or (d)(5)(i)(B)'' in paragraph 740.7(d)(4).

PART 748—CORRECTED

4. Section 748.10 is corrected by revising the citation reference ''§ 740.7(d)(2)'' to read ''§ 740.7(d)(5)(i)(A) or § 740.7(d)(5)(i)(B)'' in paragraph (b)(3)(i).

Dated: January 17, 2001.

Eileen M. Albanese,

Director, Office of Exporter Services, Export Administration.

[FR Doc. 01–1863 Filed 1–19–01; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 14, and 16

[Docket No. 98–1042]

Revision of Administrative Practices and Procedures; Meetings and Correspondence; Public Calendars

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations relating to meetings, correspondence, and the agency's public calendar. This action makes FDA's procedures more concise and understandable to the public, minimizes confusion about publicly available information concerning agency meetings, provides for more effective disclosure of such information, and allows the FDA to reallocate resources to areas of more urgent public health need.

DATES: This rule is effective January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Mayhew, Office of Policy (HF–22), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5211, e-mail: bmayhew@oc.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 17, 1998 (63 FR 69575), FDA issued a proposed rule to modify certain regulations pertaining to the public calendar and public meetings because such regulations are no longer effective in serving their intended purposes.

In that proposed rule, FDA tentatively concluded that the proposed action would make its procedures for public calendars and public meetings more concise and understandable to the public, minimize confusion about publicly available information

concerning agency meetings, provide for more effective disclosure of such information, and allow FDA to reallocate resources to areas of more urgent public health need.

Interested parties were given until March 2, 1999, to comment on the proposal. Three letters, each containing one or more comments, were received in response to the proposal. Such letters were from a research laboratory, a blood bank association, and a research institute. The blood bank association supported the proposal, while the two other organizations suggested a number of modifications. The comments received and FDA's responses are addressed below.

II. Comments and Agency Response

A. The Prospective Public Calendar

(Comment 1) The proposed regulation would eliminate the prospective public calendar. Three comments addressed the elimination. One comment suggested that FDA evaluate whether the use of the prospective public calendar affects participation in FDA sponsored events before eliminating the prospective public calendar. Another comment noted that the proposed rule included no data to support the agency's tentative conclusion that maintenance of the prospective public calendar is no longer practical, workable, or beneficial to the public.

While the agency has not formally studied the impact of the public calendar on the amount of participation in a public event, FDA notes that it generally does a great deal of outreach through other mechanisms, including the **Federal Register**, the Internet, direct mailings, and other direct communications. In fact, the prospective public calendar may be one of the least effective mechanisms for notifying the public of upcoming public events, given that maintenance of the calendar has been given a lower priority and fewer resources have been expended to ensure that information on the public calendar is accurate and current. FDA has not performed a study regarding the maintenance of the public calendar either. However, the agency believes that it is much more efficient to allocate its limited resources to more effective methods of communication to its stakeholders.

(Comment 2) One comment requested that FDA not abandon any important communication mechanism such as the prospective public calendar that is designed to fulfill its obligation to notify the participants about future events until it fully examines whether some simple improvements to the existing system will fix problems for FDA and the public.

Due to the extremely positive response that the agency receives at its public meetings, public hearings, and other widely-attended events, the agency believes that other mechanisms, such as the Internet and the **Federal Register**, are effectively communicating the relevant information about FDA events. FDA does not believe that simple improvements to the current prospective public calendar will significantly improve its effectiveness.

(Comment 3) One comment asserted that the reasons provided for removing the prospective public calendar (i.e., need for frequent changes to the calendar, difficulty in projecting entries 4 weeks in advance) do not appear sufficient to warrant elimination of the availability of this information from the general public, especially in light of the resources expended on direct mail, the **Federal Register**, and FDA Internet activities.

The agency notes that it is precisely because of the availability of these other mechanisms that it is deleting the prospective public calendar requirements from its regulations. The agency will continue to use these very effective and efficient mechanisms in the future. Resources devoted to these other mechanisms will more adequately ensure that the public receives information regarding FDA meetings than if those same resources were devoted to maintaining the prospective public calendar.

(Comment 4) One comment stressed the importance of the agency providing adequate advance time for its announcements through other mechanisms.

The agency agrees with this comment, and it will strive to ensure that adequate time will be provided to the public when it disseminates information about public events via the Internet, the **Federal Register**, or other mechanisms.

(Comment 5) One comment suggested that with the abandonment of the prospective public calendar, it is extremely important that FDA maintain the timely publication of all meeting summaries because they are important and useful to the public.

FDA agrees with this comment.

(Comment 6) One comment argued that it was unrealistic to expect that the public at large is able to access the same information via the Internet as in the publication it plans to discontinue.

The agency believes that Internet access has become increasingly widespread in recent years. However, even in the event that a person did not have Internet access, other mechanisms, including **Federal Register** notices and direct mail, will provide adequate notification to the public regarding information previously contained in the prospective public calendar.

B. The Retrospective Public Calendar

(Comment 7) Under the proposed regulations, only meetings between certain senior agency officials and persons outside the executive branch of Government would be included on the retrospective public calendar. If a large number of persons is in attendance at a meeting, the name of each person need not be specified in the calendar entry, and if more than one FDA representative is in attendance, only the most senior official would report the meeting. One comment stated that these proposed changes would significantly limit the availability of potentially important information and would significantly restrict the range of input reflecting the various levels within FDA.

As stated in the proposed rule (63 FR 69575), the agency finds that it has become unduly burdensome for assistants, deputies, and representatives of the agency's senior officials to report meetings. FDA anticipates that despite this limitation on the reporting of some meetings, those meetings that are of greatest interest to the public will be reflected on the retrospective public calendar, thereby providing an appropriate level of public access to information.

C. Public Meetings

(Comment 8) Under the proposed regulations, FDA representatives may determine when it is appropriate to create an official transcript, recording, or memorandum of a meeting. One comment stated that, due to these changes in § 10.65(b) through (f) (21 CFR 10.65(b) through (f)), the availability of potentially important information will be denied to the public.

Because of limited resources, the agency finds that the determination of whether memoranda of a given meeting should be prepared should be left to the discretion of the senior agency official attending the meeting, taking into consideration the subject matter of the meeting, the public interest in the issue, and the value of using agency resources to prepare such transcripts, recordings, or memoranda. The agency does not believe that this change will significantly diminish the amount of important information made available to the public. This change will allow resources to be redirected to areas of greater public health need. This change does not preclude a participant from

preparing a summary of the meeting for inclusion into the administrative record, regardless of whether the agency creates an official record.

(Comment 9) Under the proposed regulations, meetings may be public or private at FDA's discretion. One comment requested that FDA exclude any individual representing a company that is the sponsor of an application pending before the agency from the definition of ''person outside the Federal government.'' The reason for this request was that the comment did not want such an individual to have his/her meeting denied in favor of a meeting with a larger audience, raising issues about confidential business information.

The agency will not schedule larger meetings in place of necessary meetings with a sponsor of a product with an application pending before the agency. Instead, this clarification in the regulation is intended to provide the agency with the discretion to combine certain meeting requests of a similar nature. The agency has no intention of denying necessary meetings with sponsors where confidential information may be discussed. The comment misinterpreted the intent of the amendment, and the agency does not, therefore, find it necessary to change the definition of ''person outside the Federal Government''

(Comment 10) One comment suggested that FDA should publish the criteria that it uses in making a determination about whether a meeting should be public or private.

The agency believes that this comment suggests a more elaborate process for this determination than the agency contemplated or than the agency believes necessary. While FDA is increasingly striving to make its processes open, transparent, and predictable, the agency is continuing to minimize an unnecessary burden on itself or its constituents. The agency reserves the discretion to make determinations about whether a given meeting is public or private on an informal and largely ad hoc basis. However, to the extent possible, FDA will make every effort to honor meeting requests and make its meetings as open and accessible to the public as practical.

(Comment 11) One comment suggested that the agency clarify that if other publicly available documents, such as hearing transcripts, congressional letters, and hearing testimony were not issued in a timely fashion from other sources, FDA will then issue a memorandum.

The agency declines to commit to issuing of a meeting memorandum whenever other sources do not make other documents available. However, FDA will make every effort to ensure that information about meetings with Congress covered by this rule is available as quickly as possible.

III. Changes From the Proposed Rule

Proposed revised § 10.65(e)(1) and (e)(2) have been modified and redesignated as § 10.65(f) to provide information about the filing of memoranda or summaries in the administrative file.

Proposed revised § 10.65(k) has been deleted because the statutory requirement upon which it was based has been repealed. (Public Law 105–362, title VI, section 601(a)(2)(A), 112 Stat. 3285 (1998).)

In this final rule, the agency is amending § 10.100(b)(3) (21 CFR 10.100(b)(3)) to more accurately reflect the current personnel structure of the agency. A reorganization of the Office of the Commissioner of Food and Drugs (the Commissioner) has changed the organizational structure of that office. This reorganization reduces the number of senior officials who would be covered by § 10.100 (b)(3). Therefore, only the Commissioner, Senior Associate Commissioners, Deputy Commissioners, Associate Commissioner for Regulatory Affairs, Center Directors, and the Chief Counsel will be required to report meetings on the retrospective calendar.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that would not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement would be required.

V. Analysis of Impact

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public L. 104–121)) and the Unfunded Mandates Reform Act of 1995 (Pub. Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Regulatory Flexibility Act requires an analysis of regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any one year. The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. This final rule does not impose any mandates on State, local, or tribal governments, nor is it a significant regulatory action under the Unfunded Mandates Reform Act. Furthermore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further regulatory flexibility analysis is required.

VI. Paperwork Reduction Act of 1995

This regulation would impose no reporting or recordkeeping requirements that would necessitate Office of Management and Budget clearance.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 10, 14, and 16 are amended to read as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461, 21 U.S.C. 141–149, 321–397, 467f, 679, 821 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 10.30 [Amended]

2. Section 10.30 *Citizen petition* is amended in paragraph (i)(6) by removing ''§ 10.65(h)'' and adding in its place ''§ 10.65(f)''.

§ 10.33 [Amended]

3. Section 10.33 *Administrative reconsideration of action* is amended in paragraph (k)(6) by removing

''§ 10.65(h)'' and adding in its place ''§ 10.65(f)''.

§ 10.35 [Amended]

4. Section 10.35 *Administrative stay of action* is amended in paragraph (h)(6) by removing ''§ 10.65(h)'' and adding in its place ''§ 10.65(f)''.

§ 10.40 [Amended]

5. Section 10.40 *Promulgation of regulations for the efficient enforcement of the law* is amended in paragraph (g)(7) by removing ''§ 10.65(h)'' and adding in its place ''§ 10.65(f)''.

6. Section 10.65 is revised to read as follows:

§ 10.65 Meetings and correspondence.

(a) In addition to public hearings and proceedings established under this part and other sections of this chapter, meetings may be held and correspondence may be exchanged between representatives of FDA and an interested person outside FDA on a matter within the jurisdiction of the laws administered by the Commissioner. Action on meetings and correspondence does not constitute final administrative action subject to judicial review under § 10.45.

(b) The Commissioner may conclude that it would be in the public interest to hold an open public meeting to discuss a matter (or class of matters) pending before FDA, in which any interested person may participate.

(1) The Commissioner shall inform the public of the time and place of the meeting and of the matters to be discussed.

(2) The meeting will be informal, i.e., any interested person may attend and participate in the discussion without prior notice to the agency unless the notice of the meeting specifies otherwise.

(c) Every person outside the Federal Government may request a private meeting with a representative of FDA in agency offices to discuss a matter. FDA will make reasonable efforts to accommodate such requests.

(1) The person requesting a meeting may be accompanied by a reasonable number of employees, consultants, or other persons with whom there is a commercial arrangement within the meaning of § 20.81(a) of this chapter. Neither FDA nor any other person may require the attendance of a person who is not an employee of the executive branch of the Federal Government without the agreement of the person requesting the meeting. Any person may attend by mutual consent of the person requesting the meeting and FDA.

(2) FDA will determine which representatives of the agency will attend the meeting. The person requesting the meeting may request, but not require or preclude, the attendance of a specific FDA employee.

(3) A person who wishes to attend a private meeting, but who is not invited to attend either by the person requesting the meeting or by FDA, or who otherwise cannot attend the meeting, may request a separate meeting with FDA to discuss the same matter or an additional matter.

(d) FDA employees have a responsibility to meet with all segments of the public to promote the objectives of the laws administered by the agency. In pursuing this responsibility, the following general policy applies where agency employees are invited by persons outside the Federal Government to attend or participate in meetings outside agency offices as representatives of the agency.

(1) A person outside the executive branch may invite an agency representative to attend or participate in a meeting outside agency offices. The agency representative is not obligated to attend or participate, but may do so where it is in the public interest and will promote the objectives of the act.

(2) The agency representative may request that the meeting be open if that would be in the public interest. The agency representative may decline to participate in a meeting held as a private meeting if that will best serve the public interest.

(3) An agency representative may not knowingly participate in a meeting that is closed on the basis of gender, race, or religion.

(e) An official transcript, recording, or memorandum summarizing the substance of any meeting described in this section will be prepared by a representative of FDA when the agency determines that such documentation will be useful.

(f) FDA promptly will file in the appropriate administrative file memoranda of meetings prepared by FDA representatives and all correspondence, including any written summary of a meeting from a participant, that relate to a matter pending before the agency.

(g) Representatives of FDA may initiate a meeting or correspondence on any matter concerning the laws administered by the Commissioner. Unless otherwise required by law, meetings may be public or private at FDA's discretion.

(h) A meeting of an advisory committee is subject to the requirements of part 14 of this chapter.

7. Section 10.100 is revised to read follows:

§ 10.100 Public calendar.

(a) *Public calendar.* A public calendar will be prepared and made publicly available by FDA each week showing, to the extent feasible, significant events of the previous week, including significant meetings with persons outside the executive branch, that involve the representatives of FDA designated under paragraph (c) of this section.

(1) Public calendar entries will include:

(i) Significant meetings with members of the judiciary, representatives of Congress, or staffs of congressional committees when the meeting relates to a pending court case, administrative hearing, or other regulatory action or decision;

(ii) Significant meetings, conferences, seminars, and speeches; and

(iii) Social events sponsored by the regulated industry.

(2) The public calendar will not include reports of meetings that would prejudice law enforcement activities (e.g., a meeting with an informant) or invade privacy (e.g., a meeting with a candidate for possible employment at FDA), meetings with members of the press, or meetings with onsite contractors.

(b) *Calendar entries.* The calendar will specify for each entry the date, person(s), and subject matter involved. If a large number of persons are in attendance, the name of each individual need not be specified. When more than one FDA representative is in attendance, the most senior agency official will report the meeting on the public calendar.

(c) *Affected persons.* The following FDA representatives are subject to the requirements of this section:

(1) Commissioner of Food and Drugs.

(2) Senior Associate Commissioners.

(3) Deputy Commissioners.

(4) Associate Commissioner for Regulatory Affairs.

(5) Center Directors.

(6) Chief Counsel for the Food and Drug Administration.

(d) *Public display.* The public calendar will be placed on public display at the following locations:

(1) Dockets Management Branch.

(2) Office of the Associate Commissioner for Public Affairs.

(3) The FDA home page, to the extent feasible.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

8. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394,

467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 14.20 [Amended]

9. Section 14.20 *Notice of hearing before an advisory committee* is amended by removing paragraph (e).

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

10. The authority citation for 21 CFR part 16 continues to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

§ 16.60 [Amended]

11. Section 16.60 *Hearing procedure* is amended by removing paragraph (a)(3).

Dated: January 5, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–1566 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–2336]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of manganese ammonium pyrophosphate (C.I. Pigment Violet 16) as a colorant for all polymers intended for use in contact with food. This action is in response to a petition filed by Holliday Pigments, Ltd.

DATES: This rule is effective January 22, 2001. Submit written objections and requests for a hearing by February 21, 2001.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark A. 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: In a notice published in the **Federal Register** of July 21, 1999 (64 FR 39146), FDA announced that a food additive petition (FAP 9B4670) had been filed by Holliday Pigments, Ltd., Morley St., Kingston upon Hull, HU8 8DN ENGLAND. The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of manganese ammonium pyrophosphate (C.I. Pigment Violet 16) as a colorant for all polymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by February 21, 2001. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding an entry under the headings ''Substances'' and ''Limitations'' to read as follows:

§ 178.3297 Colorants for polymers.

* * * * *

(e) * * *

Substances	Limitations
* * * * * * *	
Manganese Violet (manganese ammonium pyrophosphate; CAS Reg. No. 10101–66–3).	For use at levels not to exceed 2 percent by weight of polymers. The finished articles are to contact food only under conditions of use A through H as described in table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: December 27, 2000.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–1565 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 212–2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final Rule.

SUMMARY: The Department of Justice is further exempting the United States Marshals Service (USMS) Internal Affairs System, JUSTICE/USM–002, from subsections (e)(1) and (e)(5) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). This system is currently exempt from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g) pursuant to subsections (j)(2) and (k)(5). In addition to records compiled during the course of investigations of allegations of misconduct or criminal violations by USMS personnel, this system also contains records compiled for law enforcement investigations related to actual or potential civil and regulatory violations. The additional exemptions are necessary to avoid interference with such law enforcement investigations and to protect the privacy of third party individuals.

EFFECTIVE DATE: This rule will be effective January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill on (202) 307–1823.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on November 8, 1999 (64 FR 60753). The public was given 30 days in which to comment. No public comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a ''significant economic impact on a substantial number of small entities.''

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and Privacy.

Dated: January 8, 2001.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR Part 16 is amended as follows:

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

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.101 is amended by revising paragraphs (e), introductory text, (e)(1), (f)(1), and (f)(3); by redesignating paragraphs (f)(7), (f)(8) and (f)(9) as paragraphs (f)(8), (f)(9) and (f)(10) and adding new paragraph (f)(7) as follows:

§ 16.101 Exemption of U.S. Marshals Service (USMS) Systems—limited access, as indicated.

* * * * *

(e) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g).

(1) Internal Affairs System (JUSTICE/USM–002)—Limited access. These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2) or (k)(5). Where compliance would not interfere with or adversely affect the law enforcement process, the USMS may waive the exemptions, either partially or totally.

(f) * * *

(1) From subsections (c)(3) and (d) to the extent that release of the disclosure accounting may impede or interfere with civil or criminal law enforcement efforts, reveal a source who furnished information to the Government in confidence, and/or result in an unwarranted invasion of the personal privacy of collateral record subjects or other third party individuals.

* * * * *

(3) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede, compromise, or interfere with civil or criminal law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law agencies in discharging their law enforcement responsibilities.

(4) * * *

(5) * * *

(6) * * *

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes and interfere with the preparation of a complete investigative report or otherwise impede effective law enforcement.

* * * * *

[FR Doc. 01–1737 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–04–M

DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG Order No. 2354–2001]; [FBI 105F]

RIN 1110–AA02

National Instant Criminal Background Check System Regulation

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: Final rule.

SUMMARY: The United States Department of Justice (''DOJ'' or ''the Department'') is publishing a final rule amending the

DOJ regulation implementing the National Instant Criminal Background Check System (''NICS'') pursuant to the Brady Handgun Violence Prevention Act (''Brady Act''): to establish a reduced retention period of 90 days for information relating to allowed firearm transfers in the system transaction log of background check transactions (''NICS Audit Log''), to clarify that only the FBI has direct access to the NICS Audit Log, and to clarify that, in furtherance of the purpose of auditing the use and performance of the NICS, the FBI may extract and provide information from the NICS Audit Log to the Bureau of Alcohol, Tobacco and Firearms (''ATF'') for use in ATF's inspections of Federal Firearms Licensee (''FFL'') records, provided that ATF destroys the NICS Audit Log information about allowed firearm transfers within the applicable retention period (unless discrepancies are found) and maintains a written record certifying the destruction.

EFFECTIVE DATE: March 5, 2001.

FOR FURTHER INFORMATION CONTACT: Fanny Haslebacher, Attorney-Advisor, Federal Bureau of Investigation, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147, (304) 625–2000.

SUPPLEMENTARY INFORMATION: This document finalizes the rule proposed in the **Federal Register** on March 3, 1999, (64 FR 10262). The FBI accepted comments on the proposed rule from interested parties until June 6, 1999, and slightly over 150 comments were received. With the exception of two technical changes explained below, the proposed rule is adopted as final.

Significant Comments or Changes

The Retention Period

Many of the comments asserted that the FBI was violating the requirements of the Brady Act by keeping information about approved firearm transfers for any period of time in the NICS Audit Log. Commenters stated that, in their view, the Brady Act requires immediate destruction of identifying information about individuals who have been approved for the transfer of a firearm. Commenters also asserted that the retention of information about approved firearm transfers in the NICS Audit Log constituted a firearms registry in violation of section 103(i) of the Brady Act. Some commenters labeled the NICS Audit Log a ''back door'' registration system or a *de facto* registry and expressed concern that such a ''registry'' could lead to future gun confiscations.

The Department of Justice received and considered similar comments when promulgating the final NICS regulation that established the current retention period of six months for information in the NICS Audit Log about approved firearm transfers. The discussion accompanying the final rule provided the following explanation of the Department's construction of the Brady Act as it relates to the record destruction requirement and the question of whether the NICS Audit Log constitutes a firearms registry:

> The FBI will not establish a federal firearms registry. The FBI is expressly barred from doing so by section 103(i) of the Brady Act. In order to meet her responsibility to maintain the integrity of Department systems, however, the Attorney General must establish an adequate system of oversight and review. Consequently, the FBI has proposed to retain records of approved transactions in an audit log for a limited period of time solely for the purpose of satisfying the statutory requirement of ensuring the privacy and security of the NICS and the proper operation of the system. Although the Brady Act mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a period of time within which records of approvals must be destroyed. The Department attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS.
> 63 FR 58304.

The United States Court of Appeals for the District of Columbia Circuit recently held that the Attorney General reasonably interpreted the Brady Act to permit the temporary retention of certain information regarding NICS background checks for purposes of auditing the NICS. The court held that the six-month retention period was reasonable. *National Rifle Ass'n of America, Inc.* v. *Reno,* 216 F.3d 122 (D.C. Cir. 2000), rehearing denied (Oct. 26, 2000).

The temporarily retained information on approved firearm transfers is used only for purposes related to discovering misuse or avoidance of the system or ensuring the proper operation of the system: *e.g.* (1) comparing system records of a transaction with FFL records of the same transaction in order to detect cases where discrepancies in personal identifying information or missing records may reveal either (a) unauthorized NICS checks or (b) the submission of inaccurate information to the NICS for the purpose of avoiding a background check on the person to whom the gun is transferred; (2) reviewing system records in response to allegations of system misuse; (3) performing internal employee audits to monitor employee performance and adherence to established procedures; (4) evaluating system performance, identifying and resolving operational problems, and generating statistical reports; and (5) assisting in the resolution of appeals of NICS denials. Many of these system audits would not be possible with just the NICS Transaction Number and the date on which it was issued.

A number of comments incorrectly interpreted the proposed rule as intending to allow the FBI and/or ATF to regularly conduct continued scrutiny or ''audits'' of persons who have been approved for purchase of a firearm. It is true that, if during the course of any authorized system activity it is determined that a purchaser who should have been denied was given a proceed or a purchaser who should have been given a proceed was denied, the FBI will attempt to remedy the error. In the case of someone who was approved for a transfer who should have been denied, the NICS will notify the FFL of the error. If the NICS is informed that the firearm was transferred, the NICS will notify ATF. However, other than in conjunction with activities which are linked to discovering misuse or avoidance of the system or ensuring the proper operation of the system, proceed transactions are not subjected to continued scrutiny.

Some comments doubted the ability of the audits to prevent abuses or halt illegal or falsified transfers of firearms. The Department believes that examination of FFL records in conjunction with statistical reports (*i.e.,* the number of approved and disapproved transactions for a particular time period) combined with information in the NICS Audit Log about the background checks may reveal misuse of the system or improper record keeping practices when, for instance, (1) the FFL has requested more background checks than indicated by the number of ATF Firearm Transaction Record Form 4473s (''4473s'') on file, (2) the FFL has requested fewer background checks than the number of 4473s on file, or (3) personal information recorded on the 4473s is significantly different from the information provided in the NICS background checks.

One comment suggested that the vast majority of FFLs are honest and would not abuse the system, and that if an FFL were to intentionally submit false information to the system, he or she would not record different information on the 4473 that would allow for the discovery of the discrepancy. While this scenario is possible, it is also possible, for example, that the information

recorded on the 4473 may in fact be different from the information provided to the system, or that there may be fewer 4473s than NICS checks that have been requested by the FFL. The latter scenarios would reveal possible system misuse. The Department believes that it is essential to retain approval information temporarily to allow for the possibility of discovering such abuses. At a minimum, allowing for the possibility of audits should have a deterrent effect on FFLs who might otherwise consider abusing the system. If approval information were destroyed immediately, the NICS would have to rely completely on the ''honor system'' without any means to determine whether FFLs or FFL employees submit accurate identifying information about prospective purchasers to the NICS. If approval information were destroyed immediately, there would be no safeguards against the submission of false information to the NICS for the purpose of avoiding Brady background checks or doing unauthorized checks. While most FFLs and their employees are honest and conscientious, even one instance of gun violence that results from an unlawful firearm transfer allowed by uncheckable and undeterred system abuse can have a devastating impact on the lives of individual victims and communities. The Brady Act's purpose is to prevent gun violence resulting from unlawful firearm transfers. The temporary retention of information about allowed firearm transfers is meant to advance this statutory purpose, as well as the statutory obligation to protect the privacy and security of the information of the system.

A number of comments asked how the privacy interests of individuals approved for a firearm transfer have been accounted for in the rule. Those interests have been addressed in the rule first by reducing the retention period for information about allowed transfers to the shortest practicable period of time that will allow audits. The numerous comments received expressing concern about the privacy of individuals purchasing guns is the reason the original proposal of an 18-month retention period was first reduced to six months, and now has been reduced to 90 days, even though a longer retention period would increase the FBI's ability to detect and deter misuse of the system. In fact, the 90-day period has been adopted notwithstanding comments from two law enforcement representatives and the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board (an advisory committee made up of representatives of various government agencies involved in the criminal justice process which provides advice to the Director of the FBI on the management of criminal justice information systems operated by the FBI's CJIS Division) that recommended increasing the temporary retention of approved transactions from six months to one year.

The privacy interests of individuals approved for a firearm transfer have also been accounted for in the rule by the limitation on direct access to information about allowed transfers. As stated in the amended § 25.9(b)(2) of the regulation, the temporarily retained ''[i]nformation in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS.'' Limiting direct access to allowed transfers in the NICS Audit log to the FBI ensures controlled access to the information so that it is used only for the authorized purposes discussed above.

Individual privacy interests are also protected through compliance by the NICS with the Privacy Act of 1974. The Privacy Act regulates the collection, maintenance, use and dissemination of personal information by federal government agencies. A Privacy Act notice has been published for the NICS system (63 FR 65223) (November 25, 1998) which explains the system's purpose, routine uses, and policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system. As stated in the NICS Privacy Act notice, ''The NICS regulations are to be read together with the NICS system notice.'' (63 FR 65224.) Thus, for example, Routine Use ''C'' provides for further coordination among law enforcement agencies for the purposes of investigating, prosecuting, and/or enforcing violations of criminal or civil law or regulation that may come to light during NICS operations. This portion of the routine use notice, read together with the NICS regulations, makes it clear that only the FBI has direct access to allowed transactions in the NICS Audit Log for purposes of conducting audits of the use and performance of the NICS, and that, if any record is found during this activity that indicates, either on its face or in conjunction with other information, a violation or potential violation of law, that record may be disclosed to the agency responsible for investigating the matter. By limiting direct access to information concerning allowed transfers to the FBI, and by limiting dissemination of information pursuant to published routine uses, the Department believes that it has struck the appropriate balance between protecting the personal privacy of individuals in the system and ensuring the proper and authorized operation of the system.

Several comments expressed concern that the information about allowed firearm transfers in the NICS Audit Log could fall into the hands of thieves who could target the homes of gun owners. The security measures used by the FBI at its computer facilities exceed industry standards to prevent either unauthorized destruction or theft of information. It is extremely unlikely that FBI firearm transaction records could be accessed or obtained by unauthorized individuals or entities.

Finally, one comment observed that if the NICS used technology that sent an encrypted ''digital signature'' of the information received by the system about prospective firearm purchasers back to the FFL, the goal of having such information available to audit the system could be achieved without any retention of the identifying information about approved purchasers by the FBI. In such a case, the FBI could destroy the information immediately and then simply provide to ATF the ''key'' that would unlock the encrypted information retained by the FFLs for use when ATF performed its FFL inspections. The Department believes that this approach is not currently feasible since its implementation would require an electronic interface with the system on the part of all FFLs. Although the FBI is working toward providing electronic access to the NICS by FFLs, such access has not yet been established, and, even when available, only FFLs with the appropriate computer equipment will be able to take advantage of the electronic link to NICS. In addition, the Brady Act requires that the system must, at a minimum, provide FFLs with telephone access to the NICS. It would not be easy or reliable to transmit digital signature information to FFLs over the telephone. Thus, while on its face this approach to the record retention and audit issues may have some appeal, there are technical and legal hurdles that do not make it feasible to pursue such an approach at this time. In addition, while such an approach would make record retention by the FBI unnecessary for FFL audits, it would not eliminate the need for some temporary retention of information about approved transfers to accomplish internal audits and to enable system troubleshooting.

Providing NICS Audit Log Information to ATF

Many of the comments dealt with the proposed provision allowing the FBI to share data with ATF for the purpose of comparing background check data received by the FBI with information recorded on the corresponding Form 4473 on file with an FFL. The commenters stated that the Brady Act requires immediate destruction of such records, thus making them unavailable for sharing; they also stated that the keeping and sharing of information about allowed firearms transfers constitutes a firearms registry. For the reasons cited above, the Department does not believe that the Brady Act requires immediate destruction of these records or that the temporary retention of NICS transaction information for the limited purpose of auditing use and performance of the system constitutes a firearms registry.

Several comments also stated that section 103(i)(1) of the Brady Act specifically prohibits transferring these records to ATF. Section 103(i)(1) provides that Federal officials may not ''require that any record or portion thereof generated by the system established under [the Brady Act] be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof.'' The Department believes, however, that section 103(i), which is entitled ''Prohibition Relating to Establishment of Registration Systems With Respect to Firearms,'' is intended only to prevent the establishment of a firearms registry and to prevent the government from requiring third parties outside the government from recording information about firearm transactions at a government facility. See *National Rifle Ass'n* v. *Reno,* 216 F.3d at 131. Therefore, since neither the NICS Audit Log itself nor the proposed provision of information to ATF for use in its inspections of FFLs (together with the proviso that ATF destroy the information about allowed transfers within the 90-day retention period) operates as or otherwise establishes a firearms registry, the sharing of such information with ATF does not violate section 103(i)(1).

Finally, some comments expressed the belief that the transfer of information from the NICS Audit Log to ATF also violates the Firearm Owners' Protection Act (FOPA), as codified in 18 U.S.C. 926(a). Section 926(a) provides, in relevant part, that regulations implementing the Gun Control Act promulgated by the Secretary of the Treasury after enactment of FOPA may not require that records that must be maintained by an FFL be recorded at or transferred to a government facility. Since these regulations are promulgated by the Department of Justice pursuant to the Brady Act, and since the NICS Audit Log information that will be provided to ATF consists of NICS system records, not records of an FFL, section 926(a) does not apply to the regulation adopted here.

Technical and Editorial Changes

When the Retention Period Begins To Run

The Department did not adopt the change we proposed in section 25.9(b)(1) of the NICS regulation to provide that the retention period begins to run on ''the day after the NICS check is received,'' instead of the day the ''transfer is allowed.'' The intention of this proposed change was to provide a uniform date from which to begin the retention period. It was noted by NICS Operations Center staff, however, that beginning the retention period on the day after the NICS check was received would complicate the processing of appeals that result in the reversal of a NICS denial in cases where the reversal occurs more than 90 days after the request for the NICS check was received. Under the NICS appeals process, the system gives the successful appellant a form certifying to the FFL that the system has changed the NICS determination from ''denied'' to ''allowed.'' When presented with the certificate, the FFL must contact the system to confirm the ''allowed'' determination. The system would not be able to provide such confirmation unless the record of the ''allowed'' determination is retained for a reasonable period after the transaction is allowed. For this reason, the provision in § 25.9(b)(1) of the regulation providing that the retention period begins running from the date the transfer is allowed is being left unchanged.

Syntactical Change

A syntactical change was made to clarify the following sentence in the proposed rule: ''Information in the NICS Audit Log pertaining to allowed transfers may only be directly accessed by the FBI for the purpose of conducting audits of the use and performance of the NICS.'' In the final rule, the sentence reads as follows: ''Information in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS.'' This change was made to better convey the intended meaning of the proposed language, i.e., that only the FBI has direct access to the NICS Audit Log.

Applicable Administrative Procedures and Executive Orders

Regulatory Flexibility Analysis

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. While many FFLs are small businesses, they are not subject to any additional burdens by the plan adopted to audit their use of the NICS. In addition, the rule will not have any impact on an FFL's ability to contact the NICS, nor will it result in any delay in receiving responses from the NICS.

Executive Order 12866

The Department of Justice has completed its examination of this final rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866, and thus it has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule will not

result in an annual effect on the economy of $100,000,000 or more, a major increase in costs or prices, or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The collection of information for NICS previously was approved by OMB and issued OMB control numbers 1110–0026, 1512–0129, and 1512–0130.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Business and industry, Computer technology, Courts, Firearms, Law enforcement officers, Penalties, Privacy, Reporting and record keeping requirements, Security measures, Telecommunications.

Accordingly, part 25 of title 28 of the Code of Federal Regulations is amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

1. The authority citation for Part 25 continues to read as follows:

Authority: Pub. L. 103–159, 107 Stat. 1536.

Subpart A—The National Instant Criminal Background Check System

§ 25.9 [Amended]

2. In § 25.9, paragraph (b) is revised to read as follows:

* * * * *

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) The NICS Audit Log will record the following information: type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN). In cases of allowed transfers, all information in the NICS Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be destroyed after not more than 90 days after the transfer is allowed. NICS Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. The NICS will not be used to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922 (g) or (n) or by state law.

(2) The NICS Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS. Permissible uses include extracting and providing information from the NICS Audit Log to ATF in connection with ATF's inspections of FFL records, provided that ATF destroys the information about allowed transfers within the retention period for such information set forth in paragraph (b)(1) of this section and maintains a written record certifying the destruction. Such information, however, may be retained as long as needed to pursue cases of identified misuse of the system. The NICS, including the NICS Audit Log, may not be used by any Department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions. The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

* * * * *

Dated: January 12, 2001.

Janet Reno,

Attorney General.

[FR Doc. 01–1616 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–06–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–002]

RIN 2115–AE47

Drawbridge Operation Regulations: Hillsborough River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operation of the Brorein and Platt Street Drawbridges across the Hillsborough River in Tampa, Florida. This temporary rule allows the Brorein and Platt Street Drawbridges to remain closed to navigation from 10 a.m. to 6 p.m. on Saturday, January 27, 2001. This action is necessary to facilitate the Ye Mystic Krewe of Gasparilla Invasion and Parade.

DATES: This rule is effective from 10 a.m. to 6 p.m. on January 27, 2001.

ADDRESSES: Material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07–01–002] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM was impracticable because there was not sufficient time remaining after the bridge owner notified us of the need for the bridge to remain closed for the Gasparilla event.

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

Background and Purpose

The Brorein and Platt Street Drawbridges, miles 0.16 and 0.0 respectively, across the Hillsborough River, have vertical clearances of 15.6 feet at mean high water and a horizontal clearance of 80 feet between fenders. The existing operating regulations in 33 CFR 117.291(a) require the bridge to open on signal after two hours notice.

The City of Tampa Department of Public Works requested that the Brorein and Platt Street Drawbridge operations be temporarily changed to allow the Ye Mystic krewe of Gasparilla Invasion and Parade. This temporary change to the drawbridge operating regulations will allow the drawbridge to remain closed from 10 a.m. to 6 p.m., Saturday, January 27, 2001.

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 costs and benefits under section 6(a)(3) of that order. The Office of Management and

Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). 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. 601–888–612), we considered whether this rule will have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Hillsborough River under the Brorein or Platt Street Drawbridges on January 27, 2001.

This temporary rule will not have a significant economic impact on a substantial number of small entities because the regulations will only be in effect for eight hours in an area of limited marine traffic, and the event will be highly publicized.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From 10 a.m. to 6 p.m. on January 27, 2001, in § 117.291, temporarily suspend paragraph (a) and add a new temporary paragraph (c) to read as follows:

§ 117.291 Hillsborough River.

* * * * *

(c)(1) The draws of the bridges at Platt Street, mile 0.0, and Brorein Street, mile 0.16, need not open to navigation.

(2) The draws of the bridges at Kennedy Boulevard, mile 0.4, Cass Street, mile 0.7, Laurel Street, mile 1.0, West Columbus Drive, mile 2.3, and West Hillsborough Avenue, mile 4.8, shall open on signal if at least two hours notice is given; except that, the draws shall open on signal as soon as possible after a request by a public vessel of the United States, a vessel owned or operated by the State, county or local government and used for public safety purposes, or a vessel in distress.

Dated: January 12, 2001.

T.W. Allen,

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

[FR Doc. 01–1850 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Southeast Alaska; 01–001]

RIN 2115–AA97

Safety Zone; Wrangell Narrows, Petersburg, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the barge SWINIMOSH which will be conducting blasting/dredging operations along the navigable waters of Wrangell Narrows Shipping Channel, Petersburg, Alaska. This safety zone will require periodic complete channel closures to all vessel traffic transiting the channel as necessary for the barge SWINIMOSH to conduct operations. This safety zone is needed to protect maritime vessels transiting the area from

the potential hazards associated with the blasting/dredging operations conducted by the barge SWINIMOSH.

DATES: This rule is effective from 12 a.m., January 15, 2001 until 12 a.m., April 02, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at U.S. Coast Guard, Marine Safety Office, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 463–2450.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cecil McNutt Jr., Chief Port Operations Department, U.S. Coast Guard Marine Safety Office Juneau, (907) 463–2470.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds a good cause exists for not publishing a NPRM. Application for the blasting operations was not received by the Marine Safety Office Juneau until December 19, 2000. The operations are scheduled to commence January 15, 2001; thus time to publish a NPRM is inadequate for this regulation. In keeping with requirements of 5 U.S.C. 553 (d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Publication of a NPRM and delay of the effective date would be contrary to the public interest because immediate action is necessary to protect the safety of the maritime vessel traffic in the vicinity of the blasting operation.

Background and Purpose

The U.S. Army Corps of Engineers through its contractor Western Marine Construction, Inc. will be conducting blasting/dredging operations on portions of Wrangell Narrows Shipping Channel for the Wrangell Narrows Project (ACOE project number DACW85–00–C–0015). This dredging project is necessary to maintain safe navigation within the Wrangell Narrows Shipping Channel. A 500-yard safety zone around the barge SWINIMOSH along with periodic complete channel closures is needed to protect the safety of the maritime vessel traffic from the potential hazards associated with blasting/dredging operations.

The blasting operations will begin 12 a.m. January 15, 2001, and will last until 12 a.m. April 2, 2001. This safety zone is necessary to protect the maritime public from the potential hazards associated with the blasting/dredging operations.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under sections 6(a)(3) of that Order. It has been exempted from review 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) (44FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal 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 must consider whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

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

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final 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 temporary final rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this temporary 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.**

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[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, and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T17–SEAK–001 is added to read as follows:

§ 165.T17–SEAK–001 Wrangell Narrows Channel, Petersburg, Alaska-Safety Zone.

(a) *Location.* The following area is a temporary safety zone: the waters within a 500 yard radius of the barge SWINIMOSH while engaged in blasting/dredging operations to include periodic complete channel closures in Wrangell Narrows Shipping Channel, Petersburg AK from Point Lockwood Rock, Lighted Marker #1 (LL #22845), 56°34.0′ N, 132°58.1′ W to Rock Point, Lighted Marker #40 (LL #23070), 56°40.3′ N, 132°56.1′ W.

(b) *Effective Dates.* This rule is effective from 12 a.m., January 15, 2001 until 12 a.m., April 02, 2001.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited except as authorized by the Captain of the Port-Southeast Alaska. The attending tug WALDO will be standing by on channel 16 and 13 for traffic advisory. All approaching vessel traffic must contact the tug WALDO prior to transiting the channel.

Dated: January 3, 2001.

R. C. Lorigan,

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

[FR Doc. 01–1669 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–227]

RIN 2115–AA97

Safety Zone: Coast Guard Activities New York Annual Fireworks Displays

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing 12 permanent safety zones for annual fireworks displays located in the Port of New York/New Jersey. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in a portion of the affected waterways.

DATES: This rule is effective February 21, 2001.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–227) and are available for inspection or copying at room 204, Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, NY between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 2, 2000, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Coast Guard Activities New York Annual Fireworks Displays in the **Federal Register** (65 FR 65814). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The Coast Guard is establishing twelve permanent safety zones, in eight separate locations, that will be activated for fireworks displays occurring at the same location and time on an annual basis. The eight locations are north of Bar Beach in Hempstead Harbor; Pier 14, Manhattan, in the East River; Highlands, NJ on Sandy Hook Bay; Kingston, NY on Rondout Creek; Tottenville, Staten Island, in the Arthur Kill; Red Bank, NJ on the Navesink River; the Burlington Bay Breakwater, VT; and Rensselaer, NY on the Hudson River. There are four annual fireworks displays at the location off Pier 14 in the East River and two annual displays at the location in Hempstead Harbor. Establishing permanent safety zones by notice and comment rulemaking gave the public the opportunity to comment on the zones, provided better notice than promulgating temporary rules annually, and decreases the amount of annual paperwork required for these events. The Coast Guard has received no prior notice of any impact caused by the previous events.

The Coast Guard is revising 33 CFR 165.161 by adding six new locations, revising the effective dates for two current locations, and removing three locations from the section because they are now permanent fireworks safety zones regulated by 33 CFR 165.168. The two current locations with revised effective dates are Highlands, NJ, and Kingston, NY. The three locations that are being removed are Glen Cove, NY, Yonkers, NY, and Elizabeth, NJ.

The sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 6–12 inch mortars fired from a barge or shore, combined with the Coast Guard's knowledge of tide and current conditions in these areas. The twelve safety zones are:

North Hempstead, NY Fireworks, Hempstead Harbor

The safety zone includes all waters of Hempstead Harbor within a 300-yard radius of the fireworks barge in approximate position 40°49′54″N 073°39′14″W (NAD 1983), about 360 yards north of Bar Beach, Hempstead Harbor. There are two annual fireworks displays in Hempstead Harbor. Aside from being on different days, the safety zone for each display is the same. The safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Friday before Memorial Day and the Saturday after Labor Day. If the event is cancelled due to inclement weather, then this safety zone is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Saturday before Memorial Day and the Sunday after Labor Day. The safety zone closes a portion of southern Hempstead Harbor and prevents marine traffic from transiting a portion of this area. Vessel traffic will be able to transit through the northern 6,000 yards of Hempstead Harbor as this location is in the extreme southern end of Hempstead Harbor. It is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.

Seaport Memorial Day, Labor Day, New Year's Eve, and the Deepavali Festival Fireworks, East River

The safety zone includes all waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the northeast corner of Pier 6, Manhattan. There are four annual fireworks displays in the East River. Aside from being on different days and at different times, the safety zone for each display is the same. The safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on Memorial Day, Labor Day, and New Year's Eve; and from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the first Sunday in October. If the event is cancelled due to inclement weather, then this safety zone is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the day following Memorial Day, Labor Day, and New Year's Eve; and from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the first Monday in October. The safety zone closes a portion of the East River and prevents marine traffic from transiting this area. It is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.

Highlands, NJ Fireworks, Sandy Hook Bay

The safety zone includes all waters of Sandy Hook Bay within a 150-yard radius of the fireworks barge in approximate position 40°24′33.8″N 073°59′46.2″W (NAD 1983), about 1,200 yards west of Plum Island. The safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Saturday before Father's Day. If the event is cancelled due to inclement weather, then this safety zone is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on Father's Day. The safety zone closes a portion of Sandy Hook Bay and the Shrewsbury

River, and prevents marine traffic from transiting a portion of this area. It is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.

Kingston, NY Fireworks, Rondout Creek

The safety zone includes all waters of Rondout Creek between the Kingston-Port Ewen Bridge (mile 1.1) and the Kingston-US 9 Bridge (mile 1.3). The fireworks are fired from shore at the Kingston Municipal Docks. The safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Saturday and Sunday before July 4th. The safety zone closes a portion of Rondout Creek and prevents marine traffic from transiting the area. It is needed to protect boaters from the hazards associated with fireworks launched from shore in the area.

Staten Island Fireworks, Arthur Kill

The safety zone in the Arthur Kill includes all waters of the Arthur Kill, Ward Point Bend (West), and the Raritan River Cutoff, within a 300-yard radius of the fireworks barge in approximate position 40°30′18″N 074°15′30″W (NAD 1983), about 300 yards west of Conference House Park, Staten Island. The safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 3rd and the Saturday before Labor Day. If the event is cancelled due to inclement weather, then this safety zone is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 4th and 5th, and the Sunday and Monday of Labor Day weekend. The safety zone prevents vessels from transiting a portion of the Arthur Kill, Ward Point Bend (West), and the Raritan River Cutoff, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational vessels will still be able to transit through the western 50 yards of the 540-yard wide Arthur Kill during the event. Additionally, vessels are not precluded from getting underway, or mooring at, public or private facilities in Perth Amboy, NJ, in the vicinity of this zone.

Red Bank, NJ July 3rd Fireworks, Navesink River

The safety zone northwest of Red Bank includes all waters of the Navesink River within a 360-yard radius of the fireworks barge in approximate position 40°21′20″N 074°04′10″W (NAD 1983), about 360 yards northwest of Red Bank, NJ. The safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 3rd. If the event is cancelled due to inclement weather, then this safety zone is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 4th. The safety zone prevents vessels from transiting a portion of the Navesink River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.

Burlington, VT July 3rd Fireworks, Burlington Bay

The safety zone includes all waters of Burlington Bay within a 300-yard radius of the fireworks barge in approximate position 44°28′30.6″N 073°13′31.3″W (NAD 1983), beside the Burlington Bay Breakwater. The safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 3rd. If the event is cancelled due to inclement weather, then this safety zone is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the following two Fridays and Saturdays. The safety zone prevents vessels from transiting a portion of Burlington Bay, and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area.

Rensselaer, NY Fireworks, Hudson River

The safety zone includes all waters of the Hudson River within a 180-yard radius of the fireworks barge in approximate position 42°38′23″N 073°44′59.1″W (NAD 1983), about 480 yards south of the Dunn Memorial Bridge (mile 145.4). The safety zone is effective annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the first and second Saturday in August. If the event is cancelled due to inclement weather, then this safety zone is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the first and second Sunday in August. 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.

The effective period for each safety zone is from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.), except for the safety zone off Pier 14 in the East River on the first Sunday in October which is effective from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.). However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present. These safety zones will not create a significant economic impact on marine traffic due to the following: the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. All of the displays take place late at night on a national holiday with the exceptions of Highlands, NJ, Rensselaer, NY, and the Deepavali Festival Fireworks. The Coast Guard has promulgated safety zones for fireworks displays at all 8 areas in the past and we have not received notice of any negative comments on these annual displays. Additionally, marine traffic can plan their transits through these areas around the time the safety zones are in effect. The marine community will have advance notice of these events as they are annual events with local community support. The Sandy Hook and Hudson River Pilots Associations will be notified prior to these events. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made.

This rule is being established to provide for the safety of life on navigable waters during the events, to give the marine community the opportunity to comment on the zones, and to decrease the amount of annual paperwork required for these events.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to this rulemaking.

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 costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

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

This finding is based on the minimal time that vessels will be restricted from the zones, vessels will be able to transit through these safety zones except for the 45-minute period that a Coast Guard patrol vessel is present, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. All of the displays take place

late at night on a national holiday with the exceptions of Highlands, NJ, Rensselaer, NY, and the Deepavali Festival Fireworks. The Coast Guard has promulgated safety zones for fireworks displays at all 8 areas in the past and we have not received notice of any negative comments on these annual displays. Additionally, marine traffic can plan their transits through these areas around the time the safety zones are in effect. The marine community will have advance notice of these events as they are annual events with local community support. The Sandy Hook and Hudson River Pilots Associations will also be notified prior to these events. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made.

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of: Hempstead Harbor, the East River, Sandy Hook Bay, Rondout Creek, the Arthur Kill, the Navesink River, Burlington Bay, and the Hudson River during the times these zones are activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: These are all annual events with local community support and vessels will normally be precluded from entering any of the zones for only a 45-minute period on an annual basis. Before the effective period, we will issue maritime advisories widely available to users of the Port of New York/New Jersey by the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made. Additionally, the Coast Guard has not received any negative reports from small entities affected by these displays during these displays in previous years.

Assistance for Small Entities

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

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

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. This rule fits paragraph 34(g) as it establishes 12 safety zones. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Revise § 165.161 to read as follows:

§ 165.161 Safety zones: Coast Guard activities New York annual fireworks displays.

(a) *Safety zones.* The following areas are designated safety zones:

(1) *North Hempstead, NY, fireworks, Hempstead Harbor*:

(i) *Location.* All waters of Hempstead Harbor within a 300-yard radius of the fireworks barge in approximate position 40°49′54″ N 073°39′14″ W (NAD 1983), about 360 yards north of Bar Beach, Hempstead Harbor.

(ii) *Effective period.* Paragraph (a)(1)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Friday before Memorial Day, and the Saturday after Labor Day. If the event is cancelled due to inclement weather, then paragraph (a)(1)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Saturday before Memorial Day and the Sunday after Labor Day.

(2) *Seaport Memorial Day fireworks, East River, NY*:

(i) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the northeast corner of Pier 6, Manhattan.

(ii) *Effective period.* Paragraph (a)(2)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on Memorial Day. If the event is cancelled due to inclement weather, then paragraph (a)(2)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the day following Memorial Day.

(3) *Highlands, NJ, fireworks, Sandy Hook Bay*:

(i) *Location.* All waters of Sandy Hook Bay within a 150-yard radius of the

fireworks barge in approximate position 40°24′33.8″ N 073°59′46.2″ W (NAD 1983), about 1,200 yards west of Plum Island.

(ii) *Effective period.* Paragraph (a)(3)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Saturday before Father's Day. If the event is cancelled due to inclement weather, then paragraph (a)(3)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on Father's Day.

(4) *Kingston, NY, fireworks, Rondout Creek*:

(i) *Location.* All waters of Rondout Creek between the Kingston-Port Ewen Bridge (mile 1.1) and the Kingston-US 9 Bridge (mile 1.3).

(ii) *Effective period.* Paragraph (a)(4)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Saturday and Sunday before July 4th.

(5) *Staten Island July 3rd fireworks, Arthur Kill*:

(i) *Location.* All waters of the Arthur Kill, Ward Point Bend (West), and the Raritan River Cutoff, within a 300-yard radius of the fireworks barge in approximate position 40°30′18″ N 074°15′30″ W (NAD 1983), about 300 yards west of Conference House Park, Staten Island.

(ii) *Effective period.* Paragraph (a)(5)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 3rd. If the event is cancelled due to inclement weather, then paragraph (a)(5)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 4th and July 5th.

(6) *Red Bank, NJ, July 3rd fireworks, Navesink River*:

(i) *Location.* All waters of the Navesink River within a 360-yard radius of the fireworks barge in approximate position 40°21′20″ N 074°04′10″ W (NAD 1983), about 360 yards northwest of Red Bank, NJ.

(ii) *Effective period.* Paragraph (a)(6)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 3rd. If the event is cancelled due to inclement weather, then paragraph (a)(6)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 4th.

(7) *Burlington, VT, July 3rd fireworks, Burlington Bay*:

(i) *Location.* All waters of Burlington Bay within a 300-yard radius of the fireworks barge in approximate position 44°28′30.6″N 073°13′31.3″W (NAD 1983), beside the Burlington Bay Breakwater.

(ii) *Effective period.* Paragraph (a)(7)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on July 3rd. If the event is cancelled due to inclement weather, then paragraph (a)(7)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the following two Fridays and Saturdays.

(8) *Rensselaer, NY, fireworks, Hudson River*:

(i) *Location.* All waters of the Hudson River within a 180-yard radius of the fireworks barge in approximate position 42°38′23″ N 073°44′59.1″ W (NAD 1983), about 480 yards south of the Dunn Memorial Bridge (mile 145.4).

(ii) *Effective period.* Paragraph (a)(8)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the first and second Saturday in August. If the event is cancelled due to inclement weather, then paragraph (a)(8)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the first and second Sunday in August.

(9) *Staten Island Labor Day fireworks, Arthur Kill*:

(i) *Location.* All waters of the Arthur Kill, Ward Point Bend (West), and the Raritan River Cutoff, within a 300-yard radius of the fireworks barge in approximate position 40°30′18″ N 074°15′30″ W (NAD 1983), about 300 yards west of Conference House Park, Staten Island.

(ii) *Effective period.* Paragraph (a)(9)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Saturday before Labor Day. If the event is cancelled due to inclement weather, then paragraph (a)(9)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the Sunday and Monday of Labor Day Weekend.

(10) *Seaport Labor Day fireworks, East River, NY*:

(i) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the northeast corner of Pier 6, Manhattan.

(ii) *Effective period.* Paragraph (a)(10)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on Labor Day. If the event is cancelled due to inclement weather, then paragraph (a)(10)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the day following Labor Day.

(11) *Deepavali Festival fireworks, East River, NY*:

(i) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the northeast corner of Pier 6, Manhattan.

(ii) *Effective period.* Paragraph (a)(11)(i) of this section is in effect annually from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the first Sunday in October. If the event is cancelled due to inclement weather, then paragraph (a)(11)(i) of this section is effective from 6 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the first Monday in October.

(12) *Seaport New Year's Eve fireworks, East River, NY*:

(i) *Location.* All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the northeast corner of Pier 6, Manhattan.

(ii) *Effective period.* Paragraph (a)(12)(i) of this section is in effect annually from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on New Year's Eve. If the event is cancelled due to inclement weather, then paragraph (a)(12)(i) of this section is effective from 8 p.m. (e.s.t.) to 1 a.m. (e.s.t.) on the day following New Year's Eve.

(b) *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: January 10, 2001.

R.E. Bennis,

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

[FR Doc. 01–1667 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–6935–8]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information.

EFFECTIVE DATE: This final rule is effective January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, (202) 564–8019.

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Accidental Release Prevention Requirements; Risk Management Programs Under the Clean Air Act Section 112(r)(7); Distribution of Off-Site Consequence Analysis Information, which appeared in the **Federal Register** on August 4, 2000 (65 FR 48107). The affected regulations are codified at 40 CFR Part 1400. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR Part 9 of the Agency's regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR Part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of January 22, 2001. 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 12, 2001.

Timothy Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding a new heading for Distribution of Off-Site Consequence Analysis Information and entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Distribution of Off-Site Consequence Analysis Information	
1400.3	2050–0172
1400.4	2050–0172
1400.6	2050–0172
1400.9	2050–0172

* * * * *

[FR Doc. 01–1826 Filed 1–19–01; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 95]

RIN 3090–AH36

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule increases the mileage reimbursement rate for use of a privately owned vehicle (POV) on official travel to reflect current costs of operation as determined in cost studies conducted by the General Services Administration (GSA). The governing regulation is revised to increase the mileage allowance for advantageous use of a privately owned airplane from 88 to 96.5 cents per mile, the cost of operating a privately owned automobile from 32.5 to 34.5 cents per mile, and the cost of operating a privately owned motorcycle from 26.0 to 27.5 cents per mile.

EFFECTIVE DATE: This final rule is effective January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Devoanna R. Reels, Program Analyst, telephone 202–501–3781.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and is reporting the cost per mile determination. The results of the investigation have been reported to Congress and a copy of the report appears as an attachment to this document. GSA's cost studies show the Administrator of General Services has determined the per-mile operating costs of a POV to be 96.5 cents for airplanes, 34.5 cents for automobiles, and 27.5 cents for motorcycles. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 34.5 cents effective January 1, 2001. Additionally, based on updated data reflecting current costs to an agency of operating a Government Furnished Vehicle (GFV), GSA has increased the rate for use of a POV instead of a GFV from 23.5 cents to 28.5 cents per mile.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq*.

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR part 301–10 is amended to read as follows:

PART 301–10—TRANSPORTATION EXPENSES

1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

2. Section 301–10.303 is amended by revising the entries Privately owned airplane, Privately owned automobile, and Privately owned motorcycle in the table to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
* * * * * * *	
Privately owned airplane	[1] 96.5
Privately owned automobile	[1] 34.5
Privately owned motorcycle	[1] 27.5

[1] Cents per mile.

§ 301–10.310 [Amended]

3. Section 301–10.310(a) is amended by removing ''23.5'' and adding in its place ''28.5''.

Dated: January 10, 2001.

Thurman M. Davis, Sr.,

Acting Administrator of General Services.

Attachment to Preamble—Report to Congress on the Costs of Operating Privately Owned Vehicles

Subparagraph (b)(1)(A) of section 5707 of title 5, United States Code, requires the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, to periodically investigate the cost of travel and the operation of privately owned vehicles (airplanes, automobiles, and motorcycles) to Government employees while on official business, to report the results of the investigations to Congress, and to publish the report in the **Federal Register**. This report is being published to comply with the requirements of the law.

Dated: January 10, 2001.

Thurman M. Davis, Sr.,

Acting Administrator of General Services.

Report to Congress

Subparagraph (b)(1)(A) of section 5707 of title 5, United States Code, requires that the Administrator of General Services, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and the operation of privately owned vehicles (POVs) (airplanes, automobiles, and motorcycles) to Government employees while on official business and report the results to Congress at least once a year. Subparagraph (b)(2)(B) of section 5707 of title 5, United States Code, further requires that the Administrator of General Services determine the average, actual cost per mile for the use of each type of POV based on the results of the cost investigation. Such figures must be reported to Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

Pursuant to the requirements of subparagraph (b)(1)(A) of section 5707 of Title 5, United States Code, the General Services Administration (GSA), in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conducted an investigation of the cost of operating a POV. As provided in 5 U.S.C. 5704(a)(1), the automobile reimbursement rate cannot exceed the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS has announced a new single standard mileage rate for automobiles of 34.5 cents effective January 1, 2000.

As required, GSA is reporting the results of the investigation and the cost per mile determination. Based on cost studies conducted by GSA, I have determined the per-mile operating costs of a POV to be 96.5 cents for airplanes, 34.5 cents for automobiles, and 27.5 cents for motorcycles.

I will issue a regulation to increase the current 88 to 96.5 cents for privately owned airplanes, 32.5 to 34.5 cents for privately owned automobiles, and 26.0 to 27.5 cents for privately owned motorcycles. This report

to Congress on the cost of operating POVs will be published in the Federal Register.

[FR Doc. 01–1466 Filed 1–19–01; 8:45 am]

BILLING CODE 6820–34–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 00–352]

Waivers, Reductions and Deferrals of Regulatory Fees; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of December 18, 2000, a document that was to deny the petition for reconsideration filed by the Cellular Telecommunications Industry Association on August 2, 1999 regarding the Report and Order in the matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999 and also amend the Commission's rule regarding petitions for reduction of regulatory fees. Inadvertently, the document did not include the paragraph noting the denial of the petition for reconsideration. This document corrects that error.

DATES: Effective January 17, 2001.

FOR FURTHER INFORMATION CONTACT: Carla Conover, Office of General Counsel, (202) 418–7882.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–31946, published in the **Federal Register** of December 18, 2000 (65 FR 78989), the paragraph noting the denial of a petition for reconsideration was not included. This correction includes that paragraph.

1. This supplementary information is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (Order) in MD Docket No. 98–200 (FCC 00–352), adopted September 21, 2000, and released October 10, 2000. The complete text of the Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW., Washington, DC.

2. In FR Doc. 00–31946, on page 78989, in the first column, in the Summary, insert this sentence at the end of the paragraph: This document also denies the petition for reconsideration filed by the Cellular Telecommunications Industry Association on August 2, 1999 regarding the Report and Order adopted on June 11, 1999 in the matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999.

3. On page 78989, in the third column, insert the following before the List of Subjects in 47 CFR Part 1: 4. The petition for reconsideration filed by the Cellular Telecommunications Industry Association on August 2, 1999 regarding the Report and Order adopted on June 11, 1999 in the matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999 is denied.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–1251 Filed 1–19–01; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

RIN AG44

Response to Public Comments on Amending General Permitting Regulations Relating to Habitat Conservation Plans, Safe Harbor Agreements and Candidate Conservation Agreements With Assurances

AGENCIES: Fish and Wildlife Service, Department of the Interior.

ACTION: Final rule; affirmation.

SUMMARY: On June 17, 1999, the U.S. Fish and Wildlife Service (Service) published a final rule amending parts 13 and 17 of title 50 of the Code of Federal Regulations (CFR). This rule created regulations for the new Safe Harbor and Candidate Conservation Agreements with Assurances policies, and also dictated when the permitting requirements of Habitat Conservation Plan (HCP), Safe Harbor Agreement (SHA) and Candidate Conservation Agreement with Assurances (CCAA) permits, issued under the authority of section 10 of the Endangered Species Act of 1973, as amended (ESA), will vary from the Service's general part 13 permitting requirements. On February 11, 2000, we published a request for additional public comment on seven specific regulatory changes that altered the applicability of 50 CFR part 13 to permits for HCPs, SHAs and CCAAs. Based on our review of the comments, we have decided not to repropose any of the amendments to part 13 or part 17.

DATES: Final rule published on June 17, 1999 remains effective.

ADDRESSES: Chief, Division of Conservation and Classification, or Chief, Division of Consultation, Habitat Conservation Planning and Recovery, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (Telephone 703/358–2171; Facsimile 703/358–1735).

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service (telephone 703/358–2171, facsimile 703/358–1735), or Renne Lohoefener, Chief, Division of Consultation, Habitat Conservation Planning and Recovery, U.S. Fish and Wildlife Service (telephone 703/358–2171, facsimile 703/358–1735).

SUPPLEMENTARY INFORMATION:

Background

The Service administers a variety of conservation laws that authorize the issuance of certain permits for otherwise prohibited activities. In 1974, we published 50 CFR part 13 to consolidate the administration of various permitting programs. Part 13 established a uniform framework of general administrative conditions and procedures that would govern the application, processing, and issuance of all Service permits. We intended that the general part 13 permitting provisions would apply to the various Federal wildlife and plant programs administered by the Service and that the specific permitting requirements applicable to each of these programs would supplement rather than replace the general part 13 requirements.

Subsequent to the 1974 publication of part 13, we added many wildlife regulatory programs to title 50 of the CFR. For example, we added part 18 in 1974 to implement the Marine Mammal Protection Act, modified and expanded part 17 in 1975 to implement the ESA, and added part 23 in 1977 to implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). These parts contained their own specific permitting requirements in addition to the general permitting provisions of part 13.

With respect to most of the programs under the ESA, the combination of part 13's general permitting provisions and part 17's specific permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy under the ESA, the general approach of part 13 has turned out to be

inappropriately constraining and narrow. These three areas involve the Habitat Conservation Planning, Safe Harbor, and Candidate Conservation Agreements with Assurances programs.

Congress amended section 10(a)(1) of the ESA in 1982 to authorize incidental take permits associated with HCPs. Many HCP permits involve long-term conservation commitments that run with the affected land for the life of the permit or longer. We negotiate such long-term permits recognizing that a succession of owners may purchase or resell the affected property during the term of the permit. The Service does not view this system as a problem, where the requirements of such permits run with the land and successive owners agree to the terms of the HCP. Property owners similarly do not view this arrangement as a problem so long as we can easily transfer incidental take authorization from one property owner to the next.

In other HCP situations, the HCP permittee may be a State or local agency that intends to sub-permit or blanket the incidental take authorization to hundreds if not thousands of its citizens. We do not view this activity as a problem so long as the original agency permittee abides by, and ensures compliance with, the terms of the HCP.

The above HCP scenarios have not been easily reconcilable with certain sections of part 13. For example, 50 CFR sections 13.24 and 13.25 generally impose significant restrictions on right of succession and transferability of permits. While these restrictions are well justified for most wildlife permitting situations, they have imposed inappropriate and unnecessary limitations for HCP permits where the term of the permit may be lengthy and the parties to the HCP have foreseen the desirability of simplifying sub-permitting and permit transference from one property owner to the next, or from a State or local agency to citizens under its jurisdiction.

Similar problems also could have arisen in attempting to apply the general part 13 permitting requirements to permits issued under part 17 to implement SHAs and CCAAs. A major incentive for property owner participation in the Safe Harbor or Candidate Conservation Agreements with Assurances programs is the long-term certainty the programs provide, including the certainty that the take authorization will run with the land if it changes hands and the new owner agrees to be bound by the terms of the original Agreement. Property owners could have viewed the limitations in several sections (*e.g.,* sections 13.24 and 13.25) as impediments to the development of these Agreements.

We promulgated revisions to parts 13 and 17 of the regulations that specify the instances in which the specific permit procedures for HCP, SHA, and CCAA permits will differ from the general part 13 permit procedures. We published a proposed rule on June 12, 1997, (62 FR 32178) to change the regulations at 50 CFR part 17 in order to implement the new SHA and CCAA policies and to revise the way in which the part 13 regulations would apply to the specific HCP, SHA, and CCAA regulations. On June 17, 1999, we issued a final rule (64 FR 32706) that created regulations for the SHA and CCAA policies, and changed the applicability of parts of the general part 13 permit regulations to the HCP, SHA, and CCAA programs. We also published a notice on September 30, 1999, (64 FR 52676) to correct certain errors that appeared in the final regulations. On February 11, 2000, we published a request for additional public comment (65 FR 6916) on the seven specific regulatory changes that altered the applicability of part 13 to the HCP, SHA, and CCAA programs and that were part of the June 17, 1999, final rule. This document responds to the additional public comments we received as a result of the February 11, 2000, notice.

Summary of Comments Received

We received approximately 450 comments from individuals, conservation groups, trade associations, Federal, State and local agencies, businesses, and private organizations in response to our February 11, 2000, request for additional comments on our June 17, 1999, final rule. Because most of these letters included similar comments (more than 350 were form letters received electronically), we grouped the comments according to issues. We further divided these issues into two sets. The issues in the first set deal with the June 17, 1999, final rule as a whole. The issues in the second set pertain to the individual sections of the June 17, 1999, final rule and are organized accordingly. In addition, we received a number of comments, including comments on the February 23, 1998, ''No Surprises'' final rule (63 FR 8859) itself and on the HCP program in general. These comments are beyond the scope of our request and we are not responding to those comments as part of this process. The following is a summary of the relevant comments and the Service's responses.

General Issues

Issue 1: We received over 300 comments on the public notice process associated with the June 17, 1999, final rule. Most commenters appear to believe that the February 11, 2000, request for additional comments was in fact the first opportunity for the public to comment on the proposal to conform the general permit regulations of part 13 to the HCP program. For example, many of the commenters stated that they viewed it to be ''a flagrant subversion of the concept of public notice and comment for the government to make important final rule changes and subsequently, many months later, solicit public comment on them.''

Response 1: Although not within the scope of the request for public comments, we believe these comments warrant a response because they indicate a high level of confusion concerning the nature of the February 11, 2000, notice seeking additional public comment. We believe that we have provided the public more than adequate notice to review comment on the June 17, 1999, final rule. The February 11, 2000 request for public comment was the second opportunity, not the first, that the public had to comment on changes to part 13 contained within our June 17, 1999, final rule. We first proposed changes to part 13 in order to conform part 13 with the HCP program in June of 1997.

In the summary section of our June 12, 1997, proposed rule (62 FR 32178), we stated, ''in addition, the Service proposes technical amendments to its general regulations (50 CFR part 13) which are applicable to all of its various permitting programs. These proposed revisions would clarify the application of existing general permit conditions to the permitting procedures associated with Habitat Conservation Plans, Safe Harbor Agreements and Candidate Conservation Agreements issued under section 10 of the Act.'' The background section of the June 12, 1997, proposed rule went into great detail on the basis for proposing changes to part 13 stating, ''in most instances, the combination of part 13's general permitting provisions and part 17's specific permitting provisions have worked well since 1975. However, in three areas of emerging permitting policy the 'one size fits all' approach of part 13 is inappropriately constraining and narrow.'' In the public comments solicited section of the June 12, 1997, proposed rule, we also specifically requested comment on ''the proposed regulatory changes to 50 CFR parts 13 and 17.'' Our June 12, 1997, proposed

rule would have dealt with the potential for conflict between parts 13 and 17 by providing in the scope section of the part 13 (50 CFR 13.03) that the specific provisions in the HCP, SHA and CCAA regulations, and associated permits and agreements, would control wherever they were in conflict with the general part 13 permitting regulations. In the June 17, 1999, final rule, we chose to make seven specific changes to parts 13 and 17 that removed the potential for conflict, rather than to change the scope of part 13. We view the final approach as well within the scope of the initial proposal and completely conforming to the public notice requirements of the Administrative Procedure Act.

Specific Issues

In our public notice of February 11, 2000, we sought additional public comment on our specific changes to the permitting regulations found in our June 17, 1999, final rule. The specific issues we received are arranged according to the relevant regulation with a summary of the June 17, 1999, final rule changes. Our responses to the issues raised are as follows:

Section 13.21(b)(4)—Issuance of Permits

We revised the HCP permit issuance criteria in sections 17.22(b)(2) and 17.32(b)(2) to except HCP permits from section 13.21(b)(4) and also included a similar provision in the SHA and CCAA permit regulations (sections 17.22(c)(2) and (d)(2) and 17.32(c)(2) and (d)(2)). Section 13.21(b)(4) generally prevents the Service from issuing a permit for an activity that ''potentially threatens a wildlife or plant population.'' However, the specific issuance criteria for HCP, SHA, and CCAA permits all require a finding that the permit will ''* * * not appreciably reduce the likelihood of survival and recovery of the species in the wild.'' See, for example, 50 CFR 17.22(b)(2)(i)(D).

Issue 2: We received four comments specifically on the applicability of section 13.21(b)(4). One commenter opposed the revision, and three commenters supported it. The comment in opposition to the change believed that it would shift the standard for permit issuance from ''survival and recovery'' to ''continued existence.''

Response 2: The old provision under section 13.21(b)(4) was unnecessary and potentially in conflict with the issuance criteria for permits under the HCP, SHA, and CCAA programs. The decision to rely on the permit issuance criteria in section 10 of the ESA instead of on part 13 has not changed our standard for HCP permits. The provision in section 13.21(b)(4) predates the creation of the HCP program by Congress in 1982. Although the standard in section 13.21(b)(4), with its focus on ''potential threats to a wildlife population,'' works well for research permits, it is not well suited to the HCP program which does allow for incidental take in a population if it is minimized and mitigated to the maximum extent practicable. This standard is also arguably inconsistent with the species-focused statutory issuance criteria created by the 1982 amendments to the ESA. Our June 17, 1999, final rule changes to parts 17.22(b)(2), (c)(2), (d)(2) and 17.32(b)(2), (c)(2), and (d)(2) retain the criteria for the issuance of permits associated with an HCP, SHA, or CCAA as, among others, ''* * not appreciably reduce the likelihood of survival and recovery. * * *'' Therefore, this standard for these permits did not shift.

Section 13.23(b)—Amendment of Permits

We revised section 13.23(b), which generally reserves to the Service the right to amend permits ''for just cause at any time.'' The revision clarified that the Service's reserved right to amend HCP, SHA, and CCAA permits must be exercised consistently with the assurances provided to permit holders through the permits and regulations.

Issue 3: We received four comments on the change to section 13.23(b). All four commenters supported the change, noting that the old provision was arguably inconsistent with the ''No Surprises'' final rule.

Response 3: We agree that the revision removes a potential conflict between the general provisions of part 13 and the more specific permit regulations in part 17.

Sections 13.24 and 13.25—Right of Succession by Certain Persons and Transfer of Permits and Scope of Permit Authorization

We revised sections 13.24 and 13.25 in order to expand and streamline the process for permit succession or transfer. We also revised section 13.25(d) to describe the circumstances under which a person is considered to be acting under the direct control of a state or local governmental entity and therefore is entitled to act under the authority of an incidental take permit issued to the state or local governmental entity.

Issue 4: We received six comments on the revisions to sections 13.24 and 13.25. Five of the comments voiced support for the changes, noting that ease of transferability will make the permit more worthwhile to landowners. One comment, on behalf of a number of local governmental entities, raised two issues concerning the revisions to section 13.25(d). This commenter felt that the term ''under the jurisdiction'' was vague and suggested we use non-limiting examples to indicate that any person whose activities are subject to the customary planning, permitting, and regulatory activities of a local government would be considered a person ''under the jurisdiction'' of the governmental entity for purposes of section 13.25(d). This commenter also felt that the use of the term ''permit'' was problematic because local governments sometimes operate in a permitting capacity without actually issuing a permit (*e.g.*, resolutions, ''conditions'' or ''requirements'').

Response 4: The old provisions at 13.24 and 13.25 were justified for most wildlife permitting situations, but not for HCPs, SHAs, and CCAAs. These agreements often involve substantial long-term conservation commitments, and we negotiate such agreements recognizing that there may be succession or transfer in land ownership during the term of the permit.

We agree that any person whose activities are subject to the customary planning, permitting, and regulatory activities of a state or local government would be considered a person ''under the jurisdiction'' of the governmental entity for purposes of section 13.25(d). We also believe that the second qualifying statement that ''the permit provides that such persons may carry out the authorized activity'' sufficiently narrows the scope of the transfer of take authorization.

We do not believe that the ''permit'' concept should be broadened to include circumstances in which an individual does not execute some type of document with the Service or a local governmental entity sponsoring an HCP. We structured section 13.25(d) to accommodate situations in which a local government is not regulating an activity through a local permit, but still wants to sponsor a regional HCP permit using a subpermitting process. In those situations the local government must still use some type of written instrument to include individuals within the permit's coverage, in accordance with the implementing agreement for the HCP. We, therefore, do not view the current language in section 13.25(d) as posing the problem raised by the comment.

Issue 5: Another commenter believed that the emphasis in section 13.25(d) on local governments meant that private conservation banks would not be allowed. The commenter recommended that this section be changed to allow

private entities to pass on the take authorization of a permit to individuals who purchase conservation bank credits.

Response 5: We designed section 13.25(d) to provide a process for local governments to assist with HCP implementation on a regional basis through the exercise of local land use authority. We do not view section 13.25(d) as prohibiting private conservation banks in any way, but we also do not view it as the appropriate regulatory provision to convey take authorization to purchasers of conservation bank credits. The current regulatory framework provides flexibility on how permits should be structured around conservation banks and we believe this issue can be addressed through the development of policy on conservation banking instead of through regulatory revisions.

Issue 6: One commenter objected that the new requirements for permit transfer required more for SHAs than the Safe Harbor policy did. The commenter specifically pointed to the requirement for a ''joint submission'' by the current and prospective landowner instead of the simpler requirement for a new landowner on their own to simply express an interest in continuing with the SHA.

Response 6: We agree with the commenter that it would be an odd result if it were easier to apply for a SHA than to transfer an existing agreement during the purchase of property. We do not believe that the changes to section 13.25 make it more difficult to transfer an existing permit than to apply for a new one. We also do not believe that the requirement set forth in section 13.25 for a ''joint submittal'' on the part of the old and new landowners is particularly onerous. The original landowner needs to provide some sort of communication to the Service in order to inform us of that landowner's desire to terminate the agreement. The new landowner would similarly be providing the Service with an indication of whether they seek to continue the SHA of their predecessor or not. We do not believe it will be difficult for the two entities to provide a joint submittal when the intent is to carry on the SHA. We will continue to track this issue as we gain experience with the Safe Harbor program and will consider modifications to the program in the future should the requirement for a ''joint submittal'' prove troublesome.

Section 13.26—Discontinuance of Permit Activity

In the June 17, 1999, final rule, we added a new subparagraph (7) to sections 17.22(b) and 17.32(b) to make clear that HCP permittees remain responsible for mitigation required under the terms of their permits even after surrendering their permits. The general provision on permit surrender at section 13.26 did not address this issue. The new provisions made it clear that any mitigation owed for take occurring prior to permit surrender would still be required after the permit was surrendered.

Issue 7: We received three comments on the addition of subparagraph (7) to sections 17.22(b) and 17.32(b). Two of the commenters supported the new provision addressing post termination mitigation, finding that it was a reasonable way to address the issue. One commenter did not favor the provision and suggested it was unfair to the permittee to be asked for mitigation after the permit has been surrendered or revoked.

Response 7: We have limited the requirement for post termination mitigation to those situations in which the take has occurred prior to permit surrender, but the mitigation that was agreed to has not been completed. In order to obtain a permit, the HCP must include measures that minimize and mitigate the anticipated impacts and ensure that adequate funding for the plan will be provided. In addition, the HCP must not appreciably reduce the likelihood of survival and recovery of the species to be permitted. With the issuance of the permit the Service makes a finding that the HCP has met the issuance criteria based on the assumption that the implementation of the operating conservation program will offset the proposed impacts. Therefore, we believe it is fair to require the permittee to complete mitigation for take that has already occurred.

Section 13.28a—Permit Revocation

We modified the permit revocation criteria in section 13.28(a) to provide that the section 13.28(a)(5) criterion shall not apply to HCP, SHA, and CCAA permits. We determined that it would be more appropriate to refer instead to the statutory issuance criterion in 16 U.S.C. 1539(a)(2)(B)(iv) that prohibits the issuance of a permit unless the Service finds the permit will not appreciably reduce the likelihood of survival and recovery of the species. We, therefore, included in the HCP regulations a provision (sections 17.22(b)(8) and 17.32(b)(8)) that allows a permit to be revoked if continuing the permitted activity would be inconsistent with 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency had not been remedied in a timely fashion. We also included similar provisions for SHA and CCAA permits (sections 17.22(c)(7) and (d)(7), and sections 17.32(c)(7) and (d)(7)).

Issue 8: We received numerous comments on the provisions addressing permit revocation. The comments ranged widely, but generally fell into two categories, one of which is that the agency did not go far enough with the revocation provision and the other is that the agency went too far with the revocation provision. With respect to comments objecting because the revocation provision did not go far enough, many of the commenters stated that they did not see any reason why the old provision in section 13.28(a) should be replaced with a standard they viewed as less protective. These commenters also stated that the revocation provision should have mandatory language like the word ''shall'' to indicate that revocation is not discretionary. Many commenters questioned why the Service should have to step in at public expense to remedy jeopardy situations before a permit can be revoked. Some questioned what the standard ''in a timely fashion'' means. One commenter suggested that the revocation provision also contain a reference to adverse modification of critical habitat, while another commenter recommended that the word ''jeopardy'' be used instead of ''appreciable reduction in likelihood of survival and recovery'' because the commenter viewed ''jeopardy'' to be a higher standard.

With respect to comments expressing concern that the Service has gone too far, we received a number of comments stating that the revocation provision undermined the ''No Surprises'' rule. These commenters strongly opposed any further expansion of the revocation provision and suggested further expansion would be contrary to congressional intent. A number of commenters requested that the Service reaffirm the principles of ''No Surprises'' and noted that revocation should be ''an action of last resort.'' Another commenter requested that we limit revocation to instances where the permittee is not in compliance with the permit or, at a minimum, add to the revocation provision a statement to indicate that the burden is on the agency to establish that the conditions for revocation exist. Another commenter stated that the revocation provision is not applicable to the Safe Harbor context and that Safe Harbor revocation should be limited to instances where the permittee is not in compliance or has refused efforts to salvage animals or to sell land at fair market value.

Response 8: We believe that it is inappropriate to have a standard for

revocation of a permit that is different from the standard for issuing the permit in the first place. When Congress amended the ESA in 1982 to create the HCP permit program, it clearly indicated that the relevant focus would be at the species level. Section 13.28(a)(5) predates the 1982 amendments and focuses only on the wildlife population in the permitted area. We therefore believe that it is appropriate to replace section 13.28(a)(5) with a provision that more accurately reflects the congressional intent behind the 1982 amendments. The new revocation provision established in sections 17.22 and 17.32 is written in a manner that indicates when revocation is not permissible instead of when it is. As a result, the suggestion that the word ''may'' be changed to ''shall'' is not practical. In addition, decisions involving permit revocation are fact-intensive and will require the exercise of discretion on the part of the agency. It is therefore questionable whether permit revocation standards can be described as being mandatory versus discretionary.

In the February 23, 1998, ''No Surprises'' final rule, we provided the rationale for committing the agency to step in and attempt to remedy jeopardy situations in cases where the permittee is in full compliance with the permit and has a properly implemented conservation plan in place. In exchange for assurances, the HCP permittee has agreed to undertake extensive planning and to include contingencies to address changed circumstances. This requirement does not exist in other Federal permitting programs. We believe it is fair, therefore, to commit the agency to step in and address unforeseen circumstances in the very rare circumstance that this will be required.

Because each HCP is so case-specific it is not possible to indicate what remedying the jeopardy situation in ''a timely fashion'' means in all instances. Whether a response can be deemed timely or not will depend on highly fact-specific issues, including the species involved and the source of the problem.

We do not see the need to add a reference to adverse modification of critical habitat or to use the word ''jeopardy'' in the revocation provisions. Instead we view it to be preferable to simply reference the statutory permit issuance criterion. Although one commenter viewed the terms ''jeopardy'' and ''appreciable reduction of survival and recovery'' to mean two different things, we view the terms to be synonymous, and in fact the agency's definition of ''jeopardy'' is to ''reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild.''

As we stated in our notice of February 11, 2000, ''the Service is firmly committed, as required by the ''No Surprises'' final rule, to utilizing its resources to address any such unforeseen circumstances,'' and we view the revocation provision as available ''as a last resort in the narrow and unlikely situation in which an unforeseen circumstance results in likely jeopardy to a species covered by the permit and the Service as not been successful in remedying the situation through other means.'' (65 FR 6916, 6918). We further view the likelihood of the revocation provision applying in the Safe Harbor context to be extremely remote and likely to occur only in the limited circumstances described by the commenter. Because the revocation provision is based on a biological situation and therefore applies to more situations than those in which the permittee is in non-compliance, we decline to narrow the provision as requested by one commenter. We believe that the current revocation provision is consistent with congressional intent and strikes the right balance between the need for permittee certainty and the need to avoid jeopardy to the species covered by the permit. We also believe that existing regulatory provisions, both in part 13 and the ''No Surprises'' final rule, adequately detail the agency's burden in permit revocation contexts and that there is, therefore, no need to add the suggested process changes to the revocation provision.

Section 13.50—Acceptance of Liability

We revised section 13.50 to allow more flexibility where the permittee is a State or local governmental entity and has thus taken a leadership role and is assisting in implementation of the permit program. In this limited situation, the governmental permittee would not be liable for activity conducted by sub-permittees under the authority of the permit issued to the governmental entity.

Issue 9: We received one comment in support of the change to section 13.50. The commenter noted that the change to limit the liability of State and local governments that hold master permits would encourage greater regional HCP planning.

Response 9: We agree and believe that the revision to section 13.50 is warranted. In large regional plans, the local jurisdiction largely administers the implementation of the HCP. In doing so, the local jurisdiction extends the incidental take authority of their permit to other non-Federal entities undertaking activities in accordance with the HCP. We believe it is those entities that should be responsible for their actions involving implementation of the HCP and incidental take permit, rather than the governmental entity that holds the master permit.

Sections 17.22(c)(5), (d)(5) and 17.32(c)(5), (d)(5)—Assurances Provided to the Permittee in the Case of Changed or Unforeseen Circumstances

We extended the ''No Surprises'' assurances that apply to HCP permits to SHA and CCAA permits. We did this by adding a new subparagraph (5) to sections 17.22(c) and (d) and 17.32(c) and (d).

Issue 10: We received two comments supporting the addition of assurances to the SHA and CCAA programs.

Response 10: Many landowners would be willing to manage their lands voluntarily to benefit fish, wildlife, and plants, especially those in decline, provided that they are not subjected to additional regulatory restrictions as a result of their conservation efforts. Therefore, we agree that when a landowner voluntarily implements the provisions of a SHA or CCAA, in accordance with the respective standards of those programs, the landowner should receive assurances that we will not require any additional conservation measures without their consent.

Summary

After careful review of all of the comments received, we have determined that none of the comments revealed problems with the current regulatory framework that would warrant a reproposal of the permit regulation changes. Based on our review of the comments, we believe that the changes to the permit regulations effectively achieve the goal of conforming part 13 to the more recently created permit programs for HCPs, SHAs, and CCAAs and that they strike the proper balance. Accordingly, we have decided not to repropose any of the amendments to part 13 or part 17.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 10, 2001.

Jamie R. Clark,

Director, Fish and Wildlife Service.

[FR Doc. 01–1483 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 66, No. 14
Monday, January 22, 2001

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 93–131–1]

Importation of Mangoes From the Philippines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to allow the importation of mangoes from Guimaras Island in the Republic of the Philippines, subject to inspection and the completion of a prescribed vapor heat treatment. We believe that this action is warranted because there appears to be no significant pest risk associated with the importation of mangoes from Guimaras Island in the Philippines under these circumstances. This action would relieve restrictions on the importation of mangoes from the Philippines without presenting a significant risk of introducing plant pests into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by March 23, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to:

Docket No. 93–131–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 93–131–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Gadh, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Currently, the regulations do not allow the importation of mangoes from the Philippines. However, the Republic of the Philippines Department of Agriculture (RPDA) has requested that the Animal and Plant Health Inspection Service (APHIS) allow mangoes from the Philippine island of Guimaras to be imported into the United States.

Several plant pests, including the mango seed weevil (*Sternochetus mangiferae*) and fruit flies of the genus *Bactrocera* are known to attack mangoes in the Philippines. If introduced into the United States, these pests would present a serious threat to domestic fruit crops. We are proposing to allow mangoes to be imported from Guimaras Island in the Philippines under conditions designed to mitigate the risk of plant pest introduction. The provisions for the importation of mangoes from the Philippines would be set out in a new section, § 319.56–2ii, which is explained below.

Limitation of Origin

As stated in paragraph (a) of the proposed regulations, we would allow only mangoes grown on the island of Guimaras, which is free of the mango seed weevil, to be imported into the United States. The regulations in § 319.56–2(e) contain provisions for the importation of a fruit or vegetable from a definite area or district of the country of origin that has been found free from certain injurious insects that attack the fruit or vegetable, provided that all other injurious insects that attack the fruit or vegetable in the area or district of the country of origin have been eliminated from the fruit or vegetable by treatment or any other procedures that may be prescribed by the Administrator. In the case of the Philippines, ongoing surveys conducted by the RPDA's Bureau of Plant Industry have established that the island of Guimaras is free from infestations of mango seed weevil. Additionally, the Government of the Philippines has adopted and is enforcing requirements that establish Guimaras as a quarantined area for mangoes in order to prevent the mango seed weevil and other injurious insects from being introduced onto the island from other areas of the Philippines or the world. APHIS has determined that those requirements are at least equivalent to those requirements imposed under the regulations to prevent the introduction into the United States and interstate spread of injurious insects. Finally, as required by § 319.56–2(f)(3), the RPDA has submitted to APHIS written detailed procedures for the conduct of surveys and the enforcement of requirements to prevent the introduction of injurious insects onto Guimaras. (Additional information regarding the establishment and maintenance of the mango seed weevil-free status of Guimaras Island may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.)

Treatment and APHIS Inspection

Because the island of Guimaras has not been found to be free of fruit flies of the genus *Bactrocera*, paragraph (b) of the proposed regulations would require that the mangoes be treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference into the Code of Federal Regulations at 7 CFR 300.1. Specifically, the mangoes would have to be subjected to vapor heat treatment to prevent the introduction of *Bactrocera* spp. fruit flies into the United States. The vapor heat treatment, which would have to be conducted in the Philippines under the

supervision of an APHIS inspector, would be conducted as follows:

• Size the fruit before treatment. Place temperature probes in the centers of several fruits.

• Raise the fruit pulp temperature to 46 °C (115 °F) until the fruit reaches that temperature. Hold temperature at 46 °C (115 °F) for 10 minutes.

The vapor heat treatment described above has been determined by the U.S. Department of Agriculture's (USDA's) Agricultural Research Service to be adequate to provide quarantine security against the two fruit fly species of concern, *Bactrocera occipitalis* and *B. philippensis.* As part of this proposed rule, we would update the PPQ Treatment Manual to prescribe the vapor heat treatment described above for mangoes from the Philippines. Mangoes treated in this manner would present an insignificant risk of introducing fruit flies of the genus *Bactrocera* into the United States. Further, pest risk analyses [1] conducted by APHIS have determined that any other injurious insects that might be carried by mangoes from Guimaras would be readily detectable by an inspector. Therefore, paragraph (c) of the proposed regulations would state that the mangoes are also subject to inspection and disinfection at the port of first arrival in the United States, as provided in § 319.56–6 of the regulations.

Box Labeling

In addition to the pest-free area and treatment requirements discussed above, paragraph (d) of the proposed regulations would also require that each box of mangoes imported into the United States from the Philippines be marked in accordance with § 319.56–2(g) of the regulations. Specifically, each box of mangoes would have to be clearly labeled with the following information:

• The name of the orchard or grove of origin, or the name of the grower;

• A statement that the mangoes were produced on the island of Guimaras, Republic of the Philippines; and

• The type and amount of fruit it contains.

Paragraph (g) of § 319.56–2 requires such box labeling for each box of fruit or vegetables that, like the mangoes that are the subject of this proposed rule, are imported into the United States in accordance with § 319.56–2(e)(3) or (e)(4).

[1] Information regarding these analyses may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Phytosanitary Certificate

Paragraph (e) of the proposed regulations would require each shipment of mangoes to be accompanied by a phytosanitary certificate issued by the RPDA that contains additional declarations stating that the mangoes were grown on the island of Guimaras and have been treated for fruit flies of the genus *Bactrocera* in accordance with the PPQ Treatment Manual. The phytosanitary certificate would serve as RPDA's official confirmation that the origin and treatment requirements of the regulations had been met.

Trust Fund Agreement

We are proposing that APHIS' participation in the treatment and inspection activities in the Philippines that would be required for the importation of mangoes be contingent upon the RPDA entering into a trust fund agreement with APHIS. Under paragraph (f) of the proposed regulations, the trust fund agreement would require the RPDA to pay, in advance of each shipping season, all costs that APHIS estimates that it will incur in providing the necessary services in the Philippines during that shipping season. Such costs would include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing the services.

The trust fund agreement would require the RPDA to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement would further require that the RPDA deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any additional mangoes would be treated or inspected. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the RPDA or held on account until needed, at the RPDA's option.

Department Not Responsible for Damage

Paragraph (g) of the proposed regulations would explain that, although the treatments for mangoes prescribed in the PPQ Treatment Manual are judged from experimental tests to be safe, the USDA is not responsible for any damage that might be sustained by the mangoes as a result of the prescribed treatment.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would amend the regulations governing the importation of fruits and vegetables by allowing, under certain conditions, the importation of mangoes from the Philippines into the United States.

Analysis

Nearly all of the mangoes consumed in the United States are imported, and the quantity of imported mangoes has grown steadily and rapidly in recent years. Over the 5-year period 1995 through 1999, mango imports increased at an annual rate of about 9 percent (table 1). During this same period, the average value of imported mangoes fell from about $0.85 per kg to about $0.65 per kg. These data suggest a high level of market competition among those countries supplying mangoes to the U.S. market.

TABLE 1.—QUANTITY AND VALUE OF U.S. MANGO IMPORTS, 1995–1999

Year	Metric tons	Value (in millions)
1995	141,673	$121.01
1996	171,349	103.81
1997	186,530	119.07
1998	197,587	132.43
1999	218,941	142.99

Source: USDA, National Agricultural Statistics Service.

Mexico is the source of most U.S. mango imports, supplying between 75 percent and 85 percent in each of the 5 years between 1995 and 1999. Other major sources are Brazil, Ecuador, and Peru.

U.S. production of mangoes has primarily been in southern Florida, with a smaller quantity grown in Hawaii and a negligible amount produced in California. According to the 1997 Census of Agriculture, there were 218 mango farms in Florida, 171 in Hawaii, and 2 in California. The total domestic harvest that year was about 2,829 metric tons, of which about 97 percent was produced in Florida and about 3 percent produced in Hawaii. There are no U.S. mango exports.

Florida's mango producers suffered a severe setback in 1992, when Hurricane

Andrew destroyed many of the trees. According to the Florida Agricultural Statistics Service, bearing acres fell from 2,500 in 1992 to 1,400 in 1993. Yields have also declined sharply, from 160 bushels per acre in 1992 to 71 bushels per acre in 1997, due in part to bloom and disease problems at fruit set. Consequently, the value of Florida's mango production in 1997, $1.45 million, was only one-third of the value of production in 1992, $4.28 million.

The Florida Agricultural Statistics Service has not reported on mango production since 1997, a reflection of the industry's decline. Little of the State's crop now enters the national market to compete with fresh fruit imports. Most of the production is either consumed fresh within Florida or is processed into chutney or other products.

The quantity of mangoes expected to be imported from Guimaras Island is not known. In 1993, about 3,000 metric tons were reportedly produced there. If all of the island's 1993 production were exported to the United States, it would represent an amount similar to what was harvested domestically in 1997 (the most recent year for which U.S. production data are available). However, given the large quantity of mangoes imported from Mexico and other countries, 3,000 metric tons represent only about 1.6 percent of what the U.S. supply was in 1997, and an even smaller proportion of today's supply; between 1997 and 1999, U.S. mango imports increased by more than 17 percent.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small entities. Whether affected entities may be considered small depends on their annual gross receipts. Annual receipts of $500,000 or less is the small entity criterion set by the Small Business Administration for establishments primarily engaged in ''other noncitrus fruit farming'' (NAICS code 111339). Most, if not all, mango producers in the United States are small entities.

Conclusion

U.S. mango imports dwarf domestic production. Mango imports during the late 1990's expanded annually by amounts several times greater than the quantity likely to be imported from Guimaras Island. It is reasonable to assume that the growth in U.S. mango imports will continue, with Guimaras Island but one more foreign source. We do not expect that the economic effects of this proposed rule on U.S. entities, large or small, would be significant.

The proposed importation of mangoes from Guimaras Island is not expected to significantly affect U.S. mango producers. The amount imported will be very small compared to current import levels. Moreover, much of Florida's harvest (the source of 97 percent of domestic production in 1997) is consumed within that State or is processed into chutney and other products; these markets are unlikely to be affected by the availability of an additional source of imported fresh mangoes.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow mangoes to be imported into the United States from the Philippines. If this proposed rule is adopted, State and local laws and regulations regarding the importation of fruits and vegetables under this rule would be preempted while the mangoes are in foreign commerce. Mangoes are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 93–131–1. Please send a copy of your comments to: (1) Docket No.93–131–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the regulations governing the importation of fruits and vegetables to provide for the importation into the United States of mangoes grown on Guimaras Island in the Philippines under conditions designed to prevent the introduction into the United States of plant pests. The proposed program for the importation of mangoes from Guimaras Island would require the use of box marking to indicate the origin of the fruit, phytosanitary certificates to confirm that the fruit has been grown and treated in accordance with the conditions set forth in the regulations, and a trust fund agreement between the RPDA and APHIS to cover the Agency's participation in the treatment and inspection activities in the Philippines that would be required for the importation of mangoes.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

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

Respondents: Philippine plant protection officials; mango producers and packinghouses on Guimaras Island, Philippines.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 40.

Estimated total annual burden on respondents: 40 hours.

Copies of this information collection can be obtained from Mrs. Celeste

Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant pests and diseases, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

2. In § 300.1, paragraph (a), the introductory text would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) *Plant Protection and Quarantine Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which was reprinted November 30, 1992, and includes all revisions through [*date*], has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772; 7 U.S.C. 450; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

4. A new § 319.56–2ii would be added to read as follows:

§ 319.56–2ii Administrative instructions: conditions governing the entry of mangoes from the Philippines.

Mangoes (fruit) *(Mangifera indica)* may be imported into the United States from the Philippines only under the following conditions:

(a) *Limitation of origin.* The mangoes must have been grown on the island of Guimaras, which the Administrator has determined meets the criteria set forth in § 319.56–2(e)(4) and § 319.56–2(f) with regard to the mango seed weevil *(Sternochetus mangiferae).*

(b) *Treatment.* The mangoes must be subjected to vapor heat treatment for fruit flies of the genus *Bactrocera* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter. The treatment must be conducted in the Philippines under the supervision of an inspector.

(c) *APHIS inspection.* Mangoes from the Philippines are subject to inspection under the direction of an inspector, either in the Philippines or at the port of first arrival in the United States. Mangoes inspected in the Philippines are subject to reinspection at the port of first arrival in the United States as provided in § 319.56–6.

(d) *Labeling.* Each box of mangoes must be clearly labeled in accordance with § 319.56–2(g).

(e) *Phytosanitary certificate.* Each shipment of mangoes must be accompanied by a phytosanitary certificate issued by the Republic of the Philippines Department of Agriculture that contains additional declarations stating that the mangoes were grown on the island of Guimaras and have been treated for fruit flies of the genus *Bactrocera* in accordance with the Plant Protection and Quarantine Treatment Manual.

(f) *Trust Fund Agreement.* Mangoes that are treated or inspected in the Philippines may be imported into the United States only if the Republic of the Philippines Department of Agriculture (RPDA) has entered into a trust fund agreement with APHIS. That agreement requires the RPDA to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection services in the Philippines during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires the RPDA to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the RPDA to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more mangoes will be treated or inspected in the Philippines. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the RPDA or held on account until needed, at the RPDA's option.

(g) *Department not responsible for damage.* The treatments for mangoes prescribed in the Plant Protection and Quarantine Treatment Manual are judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 16th day of January 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–1655 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 1

[Docket No. 99–087–2]

Licensing and Inspection Requirements for Dealers of Dogs Intended for Hunting, Breeding, or Security Purposes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule to amend the Animal Welfare regulations to reflect our policy of regulating wholesale dealers of dogs intended for hunting, breeding, or security purposes. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 99–087–1. We will consider all comments that we receive by April 3, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 99–087–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–087–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except

holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

On December 4, 2000, we published in the **Federal Register** (65 FR 75635–75637, Docket No. 99–087–1) a proposal to amend the Animal Welfare regulations to require that only wholesale dealers of hunting, breeding, and security dogs be licensed and inspected. This change would be reflected in the definition for ''dealer'' in 9 CFR 1.1. This action would bring our regulations into accord with our policy to regulate wholesale dealers of hunting, breeding, and security dogs.

Comments on the proposed rule were required to be received on or before February 2, 2000. We are extending the comment period on Docket No. 99–087–1 for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

Done in Washington, DC, this 16th day of January 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–1654 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE164; Notice No. 23–01–01–SC]

Special Conditions: Ayres Corporation, Model LM 200, ''Loadmaster'' Cargo and Baggage Compartment Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Ayres Corporation, Model LM 200 ''Loadmaster'' airplane. This airplane will have a novel or unusual design feature(s) associated with all-cargo and combination cargo/passenger (COMBI) interior configurations. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. 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 February 21, 2001.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE164, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE164. 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: Les Taylor, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4134, fax 816–329–4090.

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 CE164.'' The postcard will be date stamped and returned to the commenter.

Background

On April 16, 1996, Ayres Corporation, P.O. Box 3090, Albany, Georgia 31708–3090, applied for a commuter category, all-cargo type certificate for their new Model LM 200. In May 1997, they reapplied for passenger and COMBI interior configurations. The Model LM 200 airplane is a nine-passenger, twin-engine airplane. The LM 200 will have all-cargo and COMBI versions.

The Model LM 200 all-cargo and COMBI airplanes are considered a novel design and were not considered when those airworthiness standards were promulgated. The FAA has determined that the existing regulations do not provide adequate or appropriate safety standards for cargo and baggage compartment fire protection in these versions of the LM 200. In order to provide a level of safety that is equivalent to that afforded to occupants of the passenger version, additional airworthiness standards, in the form of additional special conditions, are necessary.

Type Certification Basis

Under the provisions of 14 CFR § 21.17, Ayres Corporation must show that the Model LM 200 meets the applicable provisions of 14 CFR part 23 as amended by Amendments 23–1 through 23–53, effective April 30, 1998, and any exemptions, equivalent level of safety findings and special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Ayres Corporation Model LM 200 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 LM 200 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34, the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to Section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(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 LM 200 will incorporate the following novel or unusual design features: an all-cargo and a COMBI interior configuration.

Applicability

As discussed above, these special conditions are applicable to the Ayres Corporation, Model LM 200. Should Ayres Corporation 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

It is FAA's understanding that Ayres Corporation accepts the special conditions in the FAA position as noted in Ayres letter dated February 9, 1999. Compliance will be shown through design, test and analyses by Ayres Corporation.

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 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Ayres Corporation Model LM 200 airplane applicable to the all-cargo and COMBI interior configurations.

In addition to the Part 23 regulations required by the certification basis of the airplane, the following are also required for cargo or baggage compartments:

(a) Flight tests must demonstrate means to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by crew or passengers.

(b) Cargo compartments shall have either fire or smoke detection provisions, or both, unless the compartment location is such that a fire can be easily detected by the pilots while seated at their duty stations. The cargo and baggage fire protection must be in accordance with § 23.855 as well as the following:

1. The detection system must provide a visual indication to the flight crew within one minute after the start of a fire.
2. The system must be capable of detecting a fire at a temperature significantly below that at which the structural integrity of the airplane is substantially decreased.
3. There must be means to allow the crew to check the functioning of each fire detector circuit while in flight.
4. The detection system effectiveness must be shown for all approved operating configurations and conditions.

(c) The flight crew must have means to shut off the ventilating airflow to or within the compartment, from the pilot's station, on an all-cargo configuration.

(d) Passenger and COMBI configurations where the cargo or baggage compartment are not accessible to the flightcrew, must have an approved, built-in fire extinguishing system. The built-in fire extinguishing system shall be controllable from the pilot's station. There must be means to control ventilation and drafts within an inaccessible cargo or baggage compartment so the extinguishing agent can control any fire that may start in the compartment. The built-in fire extinguishing system must be installed so that no extinguishing agent likely to enter the personnel compartments will be hazardous to the occupants. The discharge of the fire extinguishing system must not cause structural damage. The capacity of the extinguishing system must be adequate for any fire likely to occur in the compartment where used. Consideration must be given to the volume of the compartment and the ventilation rate.

(e) In addition to the fire extinguishers required by § 23.851, a hand fire extinguisher must be readily accessible for use in each cargo and baggage compartment that is accessible to crewmembers in flight. Hazardous quantities of smoke, flames or extinguishing agent must not enter any compartment occupied by crew or passengers, when the access to that compartment is used.

(f) Protective breathing equipment must be installed for crewmembers in each crewmember compartment. Protective breathing equipment must:

1. Be designed to protect the flightcrew from smoke, carbon dioxide and other harmful gases at the pilot's station and while combating fires in cargo or baggage compartments.
2. Have masks that cover the eyes, nose and mouth; or masks that cover the nose and mouth plus accessory equipment to cover the eyes.
3. Allow the flightcrew to use the radio equipment and to communicate with each other while at their assigned stations.
4. Not cause any appreciable adverse effect on vision and must allow corrective glasses to be worn.
5. Supply protective oxygen of 15 minutes duration per crewmember at a pressure altitude of 8,000 feet with a respiratory minute volume of 30 liters per minute BTPD (BTPD refers to body temperature conditions (that is 37 °C at ambient pressure, dry)). If a demand oxygen system is used, a supply of 300 liters of free oxygen at 70 °F and 760 mm. Hg. pressure is considered to be adequate to meet the 15-minute-duration requirement at the prescribed altitude and minute volume. If a continuous flow protective breathing system is used (including a mask with a standard rebreather bag), a flow rate of 60 liters per minute at 8,000 feet (45 liters per minute at sea level) and a supply of 600 liters of free oxygen at 70 °F and 760 mm. Hg. pressure is considered to be adequate to meet the 15-minute-duration requirement at the prescribed altitude and minute volume.
6. Be free from hazards in itself, in its method of operation, and in its effect upon other components.
7. Have a means to allow the crew to readily determine, during flight, the quantity of oxygen available in each source of supply.

Issued in Kansas City, Missouri, on January 5, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1670 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–27–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 412 Helicopters and Agusta S.p.A. Model AB412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD) that applies to certain serial-numbered Bell Helicopter Textron, Inc. (Bell) Model 412 helicopters and Agusta S.p.A. (Agusta) Model AB412 helicopters. That AD currently requires a temporary reduction of the never-exceed velocity (Vne) limitation until an inspection of the tail rotor yoke (yoke) assembly for fatigue damage and installation of a redesigned yoke flapping stop are accomplished. Recurring periodic and special inspections to detect occurrences of yoke overload are also required. This AD would require the same actions as the previous AD but would expand the applicability of the AD to all Bell Model 412, 412CF, 412EP, and Agusta Model AB412 helicopters. This proposal is prompted by the determination that the unsafe condition exists on all Bell Model 412 and all Agusta Model AB412 helicopters, regardless of serial number. The actions specified by the proposed AD are intended to prevent static and dynamic overload damage to the yoke that could result in loss of the tail rotor and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before March 23, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466 for the Bell Model 412 helicopters; and Agusta S.p.A., 21017 Cascina Costa di Samarate (VA), Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595 for the Agusta Model AB412 helicopters. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the maksing of the proposed 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 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 document 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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–SW–27–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, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–27–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On March 16, 1998, the FAA issued AD 98–07–03, Amendment 39–10421, Docket No. 97–SW–58–AD (63 FR 14026, March 24, 1998), applicable to Bell Model 412 helicopters, serial numbers (S/N) 33001 through 33213, 34001 through 34024, 36001 through 36121, 46400 through 46434, and 46437; and Agusta Model AB412 helicopters, S/N prior to and including S/N 25806 and S/N 25901, to require a temporary reduction of the Vne limitation until an inspection of the yoke assembly for fatigue damage and installation of a redesigned yoke flapping stop are accomplished. Recurring periodic and special inspections to detect occurrences of yoke overload are also required. That action was prompted by laboratory tests and engineering analyses which indicated that the yoke assembly is susceptible to fatigue damage due to unforeseen static and dynamic loading of the tail rotor against the original flapping stop. The requirements of that AD are intended to prevent fatigue failure of the yoke that could result in loss of control of the tail rotor and subsequent loss of control of the helicopter. A correction to a technical bulletin date referenced in that AD was issued on July 10, 1998 (63 FR 38742, July 20, 1998).

Since the issuance of AD 98–07–03, the FAA has determined that the unsafe condition exists on all Bell Model 412, 412CF, and 412 EP and Agusta Model AB412 helicopters and that the applicability of AD 98–07–03 should have included all serial numbers of these helicopters. The proposed AD would also correct the unsafe condition, which was listed as fatigue failure and correct the reference to Registro Aeronautico Italiano AD 97–223, which was dated incorrectly in AD 98–07–03.

Since an unsafe condition has been identified that is likely to exist or develop on all Bell Model 412 or Agusta Model AB412 helicopters of the same type designs, the proposed AD would supersede AD 98–07–03. The proposed AD would require a reduction of the Vne limitation until an inspection of the yoke assembly for static and dynamic overload damage and installation of a redesigned yoke flapping stop are accomplished and includes additional periodic and special inspections to detect a yoke overload.

The FAA estimates that 135 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 6.5 work hours per helicopter to install the placard, inspect the yoke assembly, and install the yoke. Required parts would

cost approximately $511 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $121,635.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10421 (63 FR 14026, March 24, 1998 and 63 FR 38742, July 20, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron, Inc. and Agusta S.p.A.: Docket No. 99–SW–27–AD. Supersedes AD 98–07–03, Amendment 39–10421, Docket No. 97–SW–58–AD.

Applicability: Bell Helicopter Textron, Inc. Model 412, 412CF, and 412EP helicopters and Agusta S.p.A. Model AB412 helicopters, with tail rotor yoke assembly, part number (P/N) 212–011–702–all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 static and dynamic overload damage to the tail rotor yoke (yoke) that could result in loss of the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review the historical records of the yoke assembly for any static or dynamic overload damage history, other than normal usage, that could have imposed a bending load on the yoke but did not require replacing the yoke assembly; for example, an incident in which a damaged tail rotor blade was replaced due to a blade strike. If such a history exists, replace the yoke with an airworthy yoke.

(b) Before further flight, unless the requirements of paragraph (c) of this AD have been accomplished previously:

(1) Install a Never Exceed Velocity (Vne) red line at 120 knots indicated airspeed (KIAS) on the pilot and copilot airspeed indicators using red tape or paint and a slippage indicator on the instrument case and glass.

(2) Install a placard made of material that is not easily erased, disfigured, or obscured on the instrument panel in clear view of the pilot and copilot: ''Observe temporary Maximum Never Exceed (Vne) airspeed red line (marked at 120 knots indicated airspeed (KIAS)). Vne is 20 KIAS less than the value presented on the airspeed limitation placard for each ambient condition.''

(3) Insert the applicable Bell Helicopter Textron (BHT) 412 Temporary Revision, dated August 16, 1996, into the Model 412 Rotorcraft Flight Manual (RFM) or the applicable section of Agusta AB412 Temporary Revision No. 2, dated April 17, 1997, into the Model AB412 RFM.

(c) Within 180 calendar days:

(1) Remove yoke assembly, P/N 212–011–702-all dash numbers, and replace it with an airworthy yoke assembly, P/N 212–011–702-all dash numbers, with zero hours time-in-service (TIS), or an airworthy yoke (regardless of TIS) that has passed a one-time x-ray diffraction inspection in accordance with BHT Alert Service Bulletin (ASB) 412–96–89, Revision A, dated October 17, 1997; BHT ASB 412CF–96–01, dated September 3, 1996; or, Agusta Bolletino Tecnico (Technical Bulletin) No. 412–65, dated April 17, 1997, whichever is applicable.

(2) Install an airworthy tail rotor flapping stop, P/N 212–011–713–103.

(3) After the requirements of paragraphs (c)(1) and (c)(2) of this AD are accomplished, remove the 120 KIAS redline from the pilot and copilot airspeed indicators; remove the Vne airspeed restriction placard; and remove the BHT 412 Temporary Revision, dated August 16, 1996; BHT ASB 412CF–96–01, dated September 3, 1996; or Agusta AB412 Temporary Revision No. 2, as applicable, from the RFM.

(d) After accomplishing the requirements of paragraph (c) of this AD, at intervals not to exceed 25 hours TIS, inspect the yoke assembly and tail rotor flapping stop (stop) in accordance with Part III, Recurring 25-Hour Special Inspection and Conditional Inspection Requirement, of Bell Helicopter Textron ASB 412–96–89, Revision A, dated October 17, 1997; BHT ASB 412CF–96–01, dated September 3, 1996; or Agusta Bolletino Tecnico (Technical Bulletin) No. 412–65, dated April 17, 1997, as applicable. Replace any unairworthy yoke assembly or stop with an airworthy yoke assembly or stop before further flight.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(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 helicopter at airspeeds not to exceed 120 KIAS to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–223, dated August 1, 1997.

Issued in Fort Worth, Texas, on January 8, 2001.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 01–1587 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–272–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 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 Bombardier Model DHC–7 series airplanes. This proposal would require modification of the pressure hoses to the ground spoiler actuators. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. This action is necessary to prevent blockage of pressure hoses to the ground spoiler actuators, leading to uncommanded deployment of the ground spoilers, resulting in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 21, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–272–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office (ACO), 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Ezra Sasson, Aerospace Engineer, ANE–172, FAA, New York ACO, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7250; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–272–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. 2000–NM–272–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–7 series airplanes. TCCA advises that an operator has reported that an uncommanded deployment of all ground spoilers occurred during an engine ground-run and that all attempts by the flight crew to retract the spoilers were unsuccessful. Investigation of the problem identified the cause as a failed piston seal in a pressure hose to the ground spoiler actuators. This condition, if not corrected, could result in the blockage of pressure hoses to the ground spoiler actuators, leading to uncommanded deployment of the ground spoilers, resulting in reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin 7–27–90, dated September 3, 1999, which describes procedures for modification of the pressure hoses to the ground spoiler actuators. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–99–29, dated November 3, 1999, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada 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, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, 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 30 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. There would be no charge for required parts. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,200, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would

accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc): Docket 2000–NM–272–AD.

Applicability: Model DHC–7 series airplanes, serial numbers 003 through 113 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 (b) 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 blockage of pressure hoses to the ground spoiler actuators, leading to uncommanded deployment of the ground spoilers, resulting in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 12 months after the effective date of this AD: Modify the pressure hoses on each ground spoiler actuator, in accordance with Bombardier Service Bulletin 7–27–90, dated September 3, 1999.

Alternative Methods of Compliance

(b) 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, New York Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) 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 Canadian airworthiness directive CF–99–29, dated November 3, 1999.

Issued in Renton, Washington, on January 11, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1663 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–263–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model CN–235 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 all CASA Model CN–235 series airplanes. This proposal would require installing a second electrical connector in the electrical Master Central Unit. This action is necessary to prevent the loss of electrical power, other than that provided by the emergency system, in the event of disconnection of the single electrical connector within the electrical Master Central Unit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 21, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–263–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. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–263–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, ANM–116, FAA, 1601 Lind Avenue, SW., Renton,

Washington 98055–4056; telephone (425) 227–2125; 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 action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–263–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. 2000–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direccion General de Aviacion Civil (DGAC), which is the airworthiness authority for Spain, notified the FAA that an unsafe condition may exist on all CASA Model CN–235 series airplanes. The DGAC advises that an incorrect assembly of the electrical connector of the Master Central Unit could lead to a disconnection of the connector. This condition, if not corrected, could result in the loss of electrical power, other than that provided by the emergency system, in the event of disconnection of the single electrical connector within the electrical Master Central Unit.

Explanation of Relevant Service Information

CASA has issued Service Bulletin SB–235–24–14, dated June 27, 2000, which describes procedures for installing a second connector in the Master Central Unit. This second connector would allow the electrical connections to the generator and the battery on each side of the electrical Master Central Unit to be independent. The accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued Spanish airworthiness directive 06/00, dated June 27, 2000, in order to assure the continued airworthiness of these airplanes in Spain.

FAA's Conclusions

These airplane models are manufactured in Spain 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 require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours to accomplish the proposed installation, and that the average labor rate is $60 per work hour. Required parts would cost approximately $877. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,357.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Construcciones Aeronauticas, S.A. (CASA): Docket 2000–NM–263–AD.

Applicability: All Model CN–235 series airplanes, 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 (b) 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 loss of electrical power, other than that provided by the emergency system, in the event of disconnection of the single electrical connector within the electrical Master Central Unit, accomplish the following:

Installation

(a) Within 6 months after the effective date of this AD: Install a second electrical connector in the Master Central Unit, in accordance with CASA Service Bulletin SB–235–24–14, dated June 27, 2000.

Alternative Methods of Compliance

(b) 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, FAA. Operators 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 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

(c) 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 Spanish airworthiness directive 06/00, dated June 27, 2000.

Issued in Renton, Washington, on January 12, 2001.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1664 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 150, 172, 175, 180, 182, 185, 206, 210, and 336 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); Extension of the comment period.

SUMMARY: This document provides additional time for the public to comment on a proposal to adopt a new airworthiness directive (AD) that would apply to certain Cessna Aircraft Company (Cessna) 150, 172, 175, 180, 182, 185, 206, 210, and 336 series airplanes. The proposed AD would affect those airplanes equipped with 0513166 series plastic control wheels. The proposed AD would require you to repetitively inspect these wheels for cracks, conduct a pull test on these wheels, and replace any control wheels that are cracked or that do not pass the pull test. Replacement of the control wheels would be with ones that are FAA-approved and are not 0513166 series plastic control wheels. The proposed AD is the result of many incidents of control wheels cracking or breaking on the above-referenced airplanes. Comments received on the original notice of proposed rulemaking (NPRM) specify additional time to respond to the proposed action. The actions specified by the proposed AD are intended to detect and correct cracked or defective control wheels, which could result in loss of control of the airplane during takeoff, landing, or ground operations.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by April 4, 2001. This is extended from February 2, 2001.

ADDRESSES: Send three copies of comments to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get the service information referenced in the proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may read this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4128; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address named under the caption **ADDRESSES**. We will consider all comments received by the closing date named above, before acting on the proposed rule. We may change the proposals contained in this notice because of the comments received.

Are there any specific portions of the proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might call for a need to change the proposed rule. You may look at all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

The FAA is reexamining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.faa.gov/language/*.

How can I be sure FAA receives my comment? If you want us to

acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 98–CE–57–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The FAA has received reports of many incidents of control wheels cracking or breaking on Cessna 150, 172, 175, 180, 182, 185, 206, 210, and 336 series airplanes. The problem control wheels are 0513166 series plastic control wheels.

The cause of this problem is because of temperature variations in the molding process during manufacture of the control wheels and deterioration with age and temperature extremes.

This condition could result in the control wheels breaking while the airplane is in operation. A consequent loss of control of the airplane during takeoff, landing, or ground operations could occur.

We issued an NPRM that proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Aircraft Company (Cessna) 150, 172, 175, 180, 182, 185, 206, 210, and 336 series airplanes. The NPRM would require you to:

—Repetitively inspect and pull test the 0513166 series control wheels; and

—If necessary, replace any control wheels that fail the inspection or pull test.

What has happened to cause FAA to issue this document? We received comments on the NPRM indicating the need for more time to provide data on the proposed AD. Based on these comments and the interest in the rule expressed by various operators and other interested parties, FAA has decided to extend the comment period on this rule to seek additional data. Therefore, the comment period is extended approximately 60 days and will close April 4, 2001.

We are including additional preamble information and the actual AD for the reader's convenience.

What are the differences between the service bulletin and the proposed AD? The Cessna service letter specifies inspecting and testing the control wheels as soon as possible and positively by the next 100-hour inspection. We propose that you inspect and pull test the control wheels and replace (if necessary) the control wheels within 100 hours time-in-service (TIS) after the effective date of this proposed AD, and then at intervals not to exceed 12 months until the control wheels are replaced.

We believe that these compliance times will give the owners or operators of the affected airplanes enough time to have the proposed actions performed without compromising the safety of the airplanes.

Cost Impact

How many airplanes would this proposed AD impact? We estimate the proposed AD would affect 12,592 airplanes in the U.S. registry.

What would be the cost impact of the proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed inspection and pull test:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 hour at $60 for each hour	No parts are required	1 hour x $60 = $60	12,592 airplanes × $60 for each airplane = $755,520.

We estimate the following costs to do any necessary control wheel replacements that would be required based on the results of the proposed inspection and pull test. We have no way of determining the number of airplanes that may need such control wheel replacement:

Labor cost	Parts cost	Total cost per airplane
1 hour at $60 for each hour	$597 for each control wheel	$60 + $597 = $657.

These figures only consider the cost of the first inspection and test and do not account for repetitive inspections and tests. We do not have any means of finding out the number of repetitive inspections and tests the owner/operator would incur over the life of an affected airplane.

Regulatory Impact

How would this proposed AD impact various entities? The proposed regulations 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. We have determined that this proposed rule would not have federalism implications under Executive Order 13132.

Does this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if put into effect, will not have a significant economic impact, positive or negative, on a large number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may get a copy of it 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Cessna Aircraft Company: Docket No. 98–CE–57–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes that are certificated in any category and incorporate at least one 0513166 series plastic control wheel:

Model	Serial Nos.
150	17684 through 17999, 59001 through 59018 and 617.
150A	15059019 through 15059350 and 628.
150B	15059351 through 15059700.
150C	15060088 through 15060772.
172A	46755 through 47746; 622 and 625.
172B	17247747 through 17248734 and 630.
172C	17248735 through 17249544.
172D	17249545 through 17250572.
172E	17259573 through 17250872 and 639.
P172	P17257120 through P17257188.
175A	56239 through 56777 and 619.
175B	17556778 through 17557002.
175C	17557003 through 17557119.
180C	50662 through 50911 and 624.
180D	18050912 through 18051063.
180E	18051064 through 18051183.
180F	18051184 through 18051312.
180G	18051313 through 18051329.
182C	52359 through 53007 and 631.
182D	18253008 through 18253598 and 51623.
182E	18253599 through 18254423.
182F	18254424 through 18255058.
182G	18255059 through 18255113.
185	185–0001 through 185–0237 and 632.
185A	185–0238 through 185–0512.
185B	185–0513 through 185–0653.
185C	185–0654 through 185–0663.
206	206–0001 through 206–0062.
210	57001 through 57575 and 618.
210A	21057576 through 21057840 and 616.
210B	21057841 through 21058085.
210C	21058086 through 21058220.
210D	21058221 through 21058240.
210–5 (205)	205–0001 through 205–0480 and 641.
210–5A (205A)	205–0481 through 205–0520.
336	336–0001 through 336–0195.

Note 1: Serial numbers 616 through 619, 622, 624, 625, 628, 630 through 632, 639, 641, and 51623 are engineering-fabricated prototype airplanes that were used for prototypes and then sold. These airplanes carry unique serial numbers that are not in sequence with other airplane serial numbers.

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

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracked or defective control wheels, which could result in loss of control of the airplane during takeoff, landing, or ground operations.

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

Actions	Compliance times	Procedures
(1) Check your maintenance records to determine whether this AD applies to your airplane by doing the following: (i) Check the maintenance records to determine whether a 0513166 series plastic control wheel is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records. (ii) If, by checking the maintenance records, the pilot can positively show that no 0513166 series plastic control wheels are installed, then the inspection, testing, and replacement requirements of this AD do not apply. The AD is complied with after you make an entry into the aircraft records that shows compliance with this portion of the AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Required within 100 hours time-in-service (TIS) after the effective date of this AD.	No special procedures required to check the maintenance records.
(2) For any affected airplane where at least one 0513166 series plastic control wheel is installed, do the following: (i) Inspect each control wheel for cracks; and (ii) Conduct a pull test on each control wheel	Before further flight after the maintenance records check or within 100 hour TIS after the effective date of this AD, and reinspect afterward at intervals not to exceed 12 months until all control wheels are replaced with FAA-approved control wheels that are not 0513166 series plastic control wheels.	Do this following the instructions of Cessna Service Letter No. 64–8, dated February 14, 1964.
(3) Replace any cracked control wheel or any control wheel that does not pass any pull test, with an FAA-approved control wheel that is not a 0513166 series plastic control wheel.	Do this replacement before further flight after the inspection where the cracked or failed control wheel is found.	Do the replacements following the instructions in the applicable maintenance or service manual.
(4) Do not install, on any affected airplane, a 0513166 series plastic control wheel.	As of the effective date of this AD	Not Applicable.
(5) You may replace all control wheels with wheels that are not part number 0513166, as terminating action for the repetitive inspection and test requirement of this AD.	You may replace all control wheels at any time, except for those control wheels that are cracked or do not pass a pull test. Such wheels must be replaced prior to further flight, as required by paragraph (d)(3) of this AD.	Do the replacements following the instructions in the applicable maintenance or service manual.

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

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

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

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. You should include in the request an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Eual Conditt, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4128; facsimile: (316) 946–4407.

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

(h) *How do I get copies of the documents referenced in this AD?* You may get the service information referenced in the AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; or you may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 11, 2001.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–1665 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 00N–1633]

RIN 0910-AB95

Marking Requirements for and Prohibitions on the Reimportation of Imported Food Products That Have Been Refused Admission into the United States

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the food import regulations to require food products which, for safety reasons, are refused entry into the United States to be marked ''UNITED STATES REFUSED ENTRY.'' The proposed rule would also prohibit persons from refusing to affix this mark on refused food, from importing or

offering to import a previously refused food, and from altering, removing, tampering with, or concealing a mark. The proposed rule is intended to protect the public health against unsafe imported food products and to facilitate the examination of imported products.

DATES: Submit written comments by April 9, 2001.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381) authorizes FDA to examine foods, drugs, devices, and cosmetics imported or offered for import into the United States and to refuse admission to products under certain conditions. Imported products are subject to the same statutory and regulatory requirements as domestic products. For example, a domestic food product must not be adulterated or misbranded. Similarly, an imported food that is intended for sale in the United States must not be adulterated or misbranded.

FDA's examination of imports often begins with a review of records to determine whether additional scrutiny is warranted. FDA may, based on its review of the records, permit the goods to proceed, visually examine or take samples of the goods for laboratory analysis, or verify the registration, listing, declarations, and certifications for the product. For food products, visual examinations may be inadequate for detecting suspected microbiological contamination, pesticide residues, and other toxic elements, so FDA may take samples of an imported food product for further examination. If the examination shows that the food product appears to be in compliance with U.S. requirements, FDA releases the shipment to proceed into U.S. commerce. If the food product appears to be not in compliance, the importer has an opportunity to provide evidence or testimony that the food product complies with U.S. requirements or to submit a plan to recondition the food product to bring it into compliance if such reconditioning is possible. If, after the importer has had an opportunity to present its views or if reconditioning failed to bring the food into compliance, the food product is not in compliance, FDA may refuse admission to the food product. If refused products are not reexported within 90 days of refusal, the U.S. Customs Service (Customs Service) will have the products destroyed.

Additionally, under section 304 of the act (21 U.S.C. 334), FDA may initiate seizure and condemnation proceedings against any article of food that is adulterated or misbranded, or which may not be introduced into interstate commerce under section 404 of the act (21 U.S.C. 344). A court may, after seizure and condemnation of an imported article, order the article to be destroyed or permit the article to be reexported (see *United States* v. *Food, 2,998 Cases*, 64 F.3d 984 (5th Cir. 1995)). The Customs Service also has seizure procedures (see 19 U.S.C. 1595a).

In recent years, the demand on FDA's resources for reviewing food imports has increased significantly. For example, in 1985, approximately 950,000 line items of goods were offered for import into the United States. (A line item corresponds to a specific item on an invoice or shipping papers.) By 1998, the number of line items had increased to over 3 million (see statement by William B. Schultz, Deputy Commissioner for Policy, Food and Drug Administration, before the Permanent Subcommittee on Investigations, Senate Committee on Government Affairs, September 24, 1998). FDA's ability to inspect a sufficient proportion of imports has been severely hampered by this increase. Currently, FDA examines or samples less than 2 percent of imported foods for compliance with FDA requirements.

FDA is aware that some unscrupulous importers use various measures to subvert this process in order to introduce unsafe food products into the United States. In April 1998, the General Accounting Office (GAO) issued a report entitled ''Food Safety: Federal Efforts to Ensure the Safety of Imported Foods are Inconsistent and Unreliable'' (GAO/RCED–98–103). The GAO report stated that some importers evade import controls and are able to introduce contaminated, adulterated, or unsafe food into the United States even when FDA refused to admit the food and the Customs Service ordered the food to be reexported or destroyed. In particular, the GAO report noted that FDA does not require that refused foods be marked as ''refused entry.''

Additionally, in 1998, the Senate Governmental Affairs Committee's Permanent Investigations Subcommittee held hearings on the safety of food imports. The Committee heard testimony about various methods used to avoid food safety inspections and to introduce adulterated food into the United States. These methods included reimporting refused goods through another U.S. port (''port shopping'') and substituting trash or other items for adulterated food products for which FDA has refused entry so that the trash and other items, rather than the adulterated food products, were destroyed or reexported (Ref. 2) (statement of ''Former Customs Broker''). Placing a clearly identifiable mark on food imports that have been refused admission for safety reasons would help curtail the reintroduction of unsafe food products into the United States.

On July 3, 1999, the President issued a memorandum to the Secretary of Health and Human Services and the Secretary of the Treasury (the Secretaries) on the safety of imported foods. The memorandum identified food safety as a high priority and, among other things, directed the Secretaries to take all actions available to ''prohibit the reimportation of food that has been previously refused admission and has not been brought into compliance with United States laws and regulations (so called 'port shopping'), and require the marking of shipping containers and/or papers of imported food that is refused admission for safety reasons....''

II. Description of the Proposed Rule

A. Introduction

FDA is proposing to amend its import regulations to create a new § 1.98 entitled ''Marking Requirements for and Prohibitions on the Reimportation of Food Products That Have Been Refused Admission into the United States.'' The proposal would require importers or consignees to mark food (including animal feed) that FDA refuses to admit, for safety reasons, into the United States. The mark should make it more difficult for imported food products that have been refused admission into the United States to evade import controls and would complement FDA's efforts to monitor food imports more effectively. The proposed rule would also prohibit importers from reimporting refused shipments.

FDA and the Customs Service held two public meetings to discuss imported food safety on February 10, 2000, in Los Angeles, CA, and on February 17, 2000, in Washington, DC. Several comments were made concerning marking refused food imports, and FDA addresses those

comments as part of this description of the proposed rule.

B. Who Must Affix the Mark?

If you are an importer or consignee of a shipment of imported food that FDA has refused to admit for safety reasons, you would be subject to the rule. (For purposes of this rule, the reference to ''safety reasons'' means that consuming the imported food could adversely affect a person's health.) Under proposed § 1.98(a), if FDA has refused to admit your imported food into the United States for safety reasons, you must mark the refused food as ''UNITED STATES REFUSED ENTRY.'' An FDA employee or FDA-designated official (such as an FDA-commissioned official) would supervise the marking process.

In contrast, if FDA refused admission of your imported food for other nonsafety reasons, you would not be subject to this rule. For example, if FDA refused to admit your imported food because it was labeled in a foreign language, you would not have to mark the refused food product. If, however, FDA refused to admit your imported food because it contained an unsafe ingredient, you would have to mark the refused product in accordance with the regulation.

C. What Must the Mark Look Like?

Proposed § 1.98(b) would require you to make the mark in capital letters at least 2.5 centimeters (cm) or 1 inch high. The mark would state ''UNITED STATES REFUSED ENTRY.'' The mark's language and format are similar to those used by the U.S. Department of Agriculture on meat and meat food products that have been refused admission into the United States (9 CFR 327.26(c)).

Some comments during a public meeting suggested that the mark include some indication of why the food product was refused entry instead of stating simply that the food was refused entry. FDA has not included this suggestion in the proposed rule because the text of the proposed mark, ''UNITED STATES REFUSED ENTRY,'' is applicable to all products that are refused entry for safety reasons and is similar to a mark used by the U.S. Department of Agriculture. If FDA required the mark to explain the reasons for the refusal, importers and consignees would need multiple marks (to cover the various possible reasons for refusing entry) or would need to use ''fill in the blank'' marks which could then be illegible (if the reasons are handwritten) or difficult to use (if the reasons are machine-printed). Nevertheless, FDA welcomes additional comment on this point.

Proposed § 1.98(b)(1) would require the mark to be permanent, clear, and conspicuous. This will help ensure that the mark is noticeable. For example, if the mark is affixed to a bill of lading, you could place the mark diagonally across the center of the document and use colored ink. However, the proposal would not specify any particular method of marking. In other words, you can use adhesive labels, ink stamps, or any other marking tool or device so long as the mark is at least 2.5 cm or 1 inch high, uses the correct language, is clear and conspicuous, and is permanently affixed to the refused imported food's container (where possible) and to shipping documents accompanying the imported food before it leaves the port of entry.

Another comment at a public meeting suggested that the mark be in ''invisible ink'' that FDA would be able to see through the use of some scanning device. Some individuals expressed concern about how a visible mark would affect the refused product's ability to enter a foreign country or return to the exporting country. This proposed rule does not include the use of ''invisible ink.'' One important benefit of the mark is that it is supposed to be clear and conspicuous; this will make it easier for FDA and the Customs Service to detect attempts to bring refused food products back into the United States. If the mark could only be seen by using some unspecified device, FDA and the Customs Service might find it difficult to determine whether the mark was correctly applied, to see the mark on goods that are being reintroduced into the United States in spite of an earlier refusal, or to readily distinguish between foods that should be admitted into the United States from foods that have already been refused entry. FDA invites comment on this point.

FDA also invites comments on whether the rule should use or allow for different size requirements due to the variety of food packages and product sizes and whether the rule should require any particular form of marking.

D. Where Must the Mark Go?

Proposed § 1.98(b)(1) would require you to affix the mark permanently to the packing container holding the refused food and on invoices, bills of lading, and any other documents accompanying the food when it is exported from the United States. The proposal would explain that, for purposes of thois rule, a packing container is any container used to pack one or more immediate containers of the refused food and that an immediate container is any container which holds an imported food for sale to the ultimate consumer. For example, assume that you have a box that holds 24 cans of imported food. the box would be the packing container, and each can would be an immediate container. You would, under the proposal, mark the box rather than mark each can. FDA would not require you to mark every individual retail unit (unless the immediate container also happens to be the packing container, such as a large bag of rice or flour). If the mark cannot be permanently affixed to a packing container (as with bulk agricultural commodities, such as a railcar of wheat, a truckload of potatoes, or a tanker of corn syrup) you would only have to place the mark on documents accompanying the food when it leaves the United States.

Several comments at the public meeting said the mark should go on cargo containers used to transport large amounts of imported food products. Others suggested using seals on cargo containers instead of merely marking the containers. FDA interpreted these comments concerning cargo containers as applying the mark or seal on items such as rail cars, containers to be attached to trucks, and other large, reusable containers. FDA has not included the comments' suggestions in this proposed rule. By proposing to require the mark to be clear, conspicuous, and permanent, FDA intends to make it difficult for a person to ''port shop'' or to conceal refused food. If the mark were placed on a large, reusable cargo container (such as a tractor trailer or rail car), it would be easy to defeat the rule simply by moving the refused food from the marked cargo container to an unmarked container. For example, if the mark is on a container attached to a truck instead of the packing containers holding the refused food product, the intent behind the rule could be defeated by shifting the refused food product from the marked tractor trailer to an unmarked one. In contrast, if the mark is on the packing containers (such as boxes or wrapped shipping palettes) holding the refused food, it will be more difficult, both in terms of time and cost, to open and repackage the refused food, and thus evade the rule's purpose. FDA invites additional comment on this point.

E. When Must You Affix the Mark?

Proposed § 1.98(b)(2) would require you to affix the mark, under the supervision of an FDA employee or person designated by FDA, before the food is exported. This is to ensure that

you place the mark, as required, on the refused food before the food leaves the United States.

F. Enforcement Issues

If this rule is finalized with a prohibition on the reimportation of refused food, reimportation of refused food in violation of this rule would constitute a violation of 19 U.S.C. 1595a which would then permit the Customs Service to seize, forfeit, and destroy the goods after following the appropriate procedures. Thus, proposed § 1.98(c) would prohibit you from: (1) Importing or offering to import any food that has been previously refused admission into the United States and marked as ''UNITED STATES REFUSED ENTRY;'' and (2) altering, removing, tampering with, or concealing a mark. If you refuse to affix a mark on a refused food import, FDA and the Customs Service might deny permission to re-export the refused food product, order the product to be destroyed, and take other regulatory action against you and the refused food. The Customs Service might also assess civil money penalties under 19 U.S.C. 1592 or 1595a(b) if you alter, remove, tamper with, or conceal a mark.

G. Authority Citation Changes

FDA is also proposing to amend the authority citation for 21 CFR part 1 to include references to sections 704 of the act (21 U.S.C. 374) and 801 of the act and section 361 of the Public Health Service Act (the PHS Act) (42 U.S.C. 264). These statutory provisions provide additional legal authority to issue the proposed rule (as explained in section III of this document).

III. Legal Authority

Section 801(a) of the act states that FDA shall refuse to admit imported food into the United States if the imported food has been manufactured, processed, or packed under insanitary conditions, is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or is adulterated or misbranded. Sections 402 and 403 of the act (21 U.S.C. 342 and 343) describe when a food is adulterated and misbranded respectively. Section 701(a) of the act (21 U.S.C. 371(a)) authorizes the agency to issue regulations for the efficient enforcement of the act, while section 701(b) of the act authorizes FDA and the Department of the Treasury to jointly prescribe regulations for the efficient enforcement of section 801 of the act.

The proposed rule is within FDA's authority at sections 402, 403, 701, and 801 of the act. Because marking refused goods would permit FDA to more efficiently enforce section 801 of the act, FDA is authorized to impose marking requirements on such food products. The mark would help ensure that food products that fail to meet the conditions for admission into the United States do not enter or reenter interstate commerce.

Section 704 of the act authorizes FDA to conduct inspections for the efficient enforcement of the act. Assuming that the proposed rule is later finalized, FDA may need to conduct inspections to help enforce the rule. Thus, while section 704 of the act does not provide independent authority to mark refused food imports, it is relevant to FDA's enforcement of the rule.

The proposed rule is also authorized by sections 301 of the PHS Act (42 U.S.C. 241) and 361 of the PHS Act. Section 301 of the PHS Act authorizes FDA to ''render assistance'' to appropriate public health authorities in the conduct of or to promote coordination of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of disease. Section 361 of the PHS Act authorizes FDA to issue regulations to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. Marking food products that have been refused entry into the United States would assist foreign public health officials to determine whether to take regulatory action against a particular product. The mark would alert foreign countries that the food product has already been refused admission into the United States. Marking such food products would also help prevent the introduction, transmission, or spread of communicable diseases into the United States by making it more difficult for such rejected food products to enter the United States through a different port or to escape detection.

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(a), 25.30(k), and 25.32(g) 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.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that the marking requirements proposed in this document are not subject to review by the Office of Management and Budget (OMB) because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Rather, the proposed statements are ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VII. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 considers a rule to be a ''significant regulatory action'' if (among other things) it may have an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. For reasons explained later in this section, FDA concludes that the proposed rule, if finalized, would not have a significant economic impact on a substantial

number of small entities. Therefore, a regulatory flexibility analysis is not required.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule because the proposed rule is not expected to result in any 1 year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

B. The Rationale Behind This Proposed Rule

The introduction to this proposed rule explains the reasons, such as ''port shopping'' and the President's July 3, 1999, memorandum on the safety of imported foods that prompted FDA, in conjunction with the Customs Service, to issue this regulation. FDA refers readers to that discussion if they seek details regarding the reasons for this proposal and the problems concerning the reimportation of previously refused imported food.

C. Regulatory Options Considered

As described earlier, the proposed rule would require importers and consignees whose food products have been refused admission in to the United States for safety reasons to mark such products as ''UNITED STATES REFUSED ENTRY.'' This will make it easier for FDA and the Customs Service to detect attempts to re-introduce previously-refused imported food into the United States.

In drafting this rule, FDA considered and rejected several alternatives. For example, one option would be to order the destruction of all refused food imports. While this would deter ''port shopping'' and similar illegal practices, this alternative is not feasible because it would require Federal resources to be diverted to supervising or otherwise ensuring that the refused food imports are stored until they can be destroyed and that they are actually destroyed. Additionally, the standard of proof to support the destruction of violative products is greater than the standard of proof for refusing to admit imported products, so ordering the destruction of refused food imports would increase, rather than decrease, the demands on government field resources. This alternative would also be extremely costly to importers since many refused shipments can be exported and legally sold or reconditioned for sale in other countries.

Another alternative would be a ''no action'' option. This alternative was unacceptable because it would allow illegal practices, such as port shopping, to continue and would result in the reentry of previously refused food imports into the United States. Consumers who ingested those unsafe food imports would, in turn, be subject to foodborne illnesses. Consequently, a ''no action'' alternative would not further efforts to protect the public health.

Another alternative would be to mark some, but not all, food refused for safety reasons. This alternative would be less costly, but would also be less efficient and less practical. This alternative was unacceptable because it would create an opportunity for some refused food imports to reenter the United States through port shopping (and to harm consumers) and because an unmarked, but previously-refused, food import would be difficult to detect compared to a previously-refused and marked food import. Additionally, marking some, but not all, refused food would inevitably create arguments as to FDA's criteria for deciding which refused foods should or should not be marked and whether a specific food import met that criteria.

For example, if the alternative was to mark refused food depending on its geographic origin (under a theory that some foreign nations regulate exported food more rigorously than others so that the United States could relax its safeguards for foods from those countries), the result would be both inefficient and unfair. To illustrate this point, assume that country A has a food regulatory system while country B has a less demanding regulatory system. If an alternative would mark unsafe food from country B, but not mark a similar, unsafe food from country A, such an alternative would make it possible for unsafe food from country A to be port shopped, thereby defeating the intent of the rule. Marking would then depend on geographic origin rather than the safety of the food itself.

As another example, if the alternative were to mark refused food imports based on their potential risk, such as marking refused foods which, if consumed, would cause death or serious illness in humans, such an approach would be impractical and difficult to apply. To illustrate this point, assume that an imported food product appears to be contaminated because mold is visible on the product. If marking depended on whether the moldy food would cause death or serious illness, arguments would inevitably arise concerning the identification of the mold, its toxicological properties (if any), the methodology or references used to analyze the mold or to determine the seriousness of the health risk associated with the mold, etc.

D. Benefit-Cost Analysis

1. Strategic Action by Importers

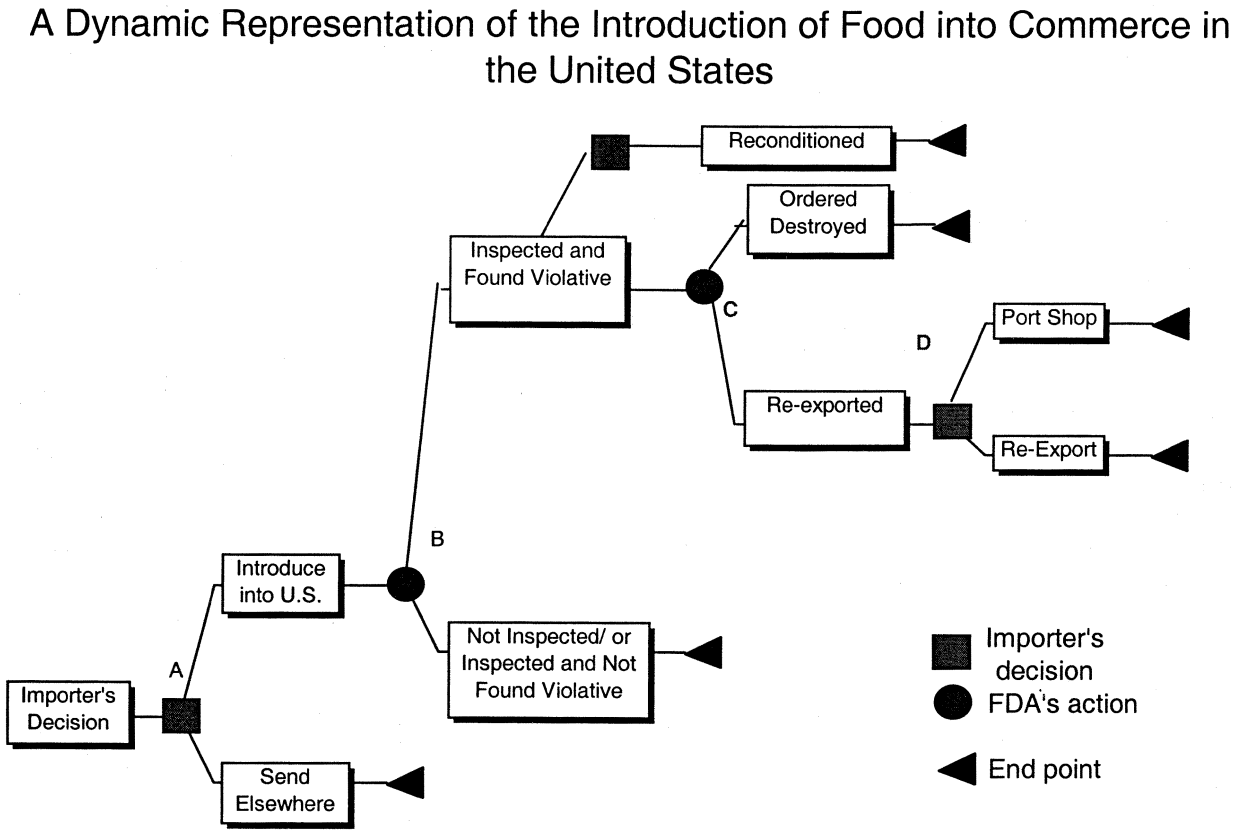
Although the vast majority of importers and consignees comply with the act, some attempt to circumvent Federal law and introduce unsafe food into U.S. commerce through illegal means such as port shopping. For these importers and consignees, measures such as those contained in this proposed rule are necessary to deter illegal conduct.

An importer's or consignee's decision on how to dispose of its cargo is influenced by changes in the expected profits associated with each of its choices. Requiring importers and consignees to mark ''UNITED STATES REFUSED ENTRY'' on imported food which has been refused admission for safety reasons changes the expected profits associated with the initial decision to attempt to import unsafe food. A mark also affects the expected profits associated with the decision to recondition, re-export, or port shop after a shipment is found violative.

The decision process of an importer of potentially unsafe food can be represented visually by a decision tree (see figure 1). This illustrates how requiring ''UNITED STATES REFUSED ENTRY'' on refused imports will alter an importer's or consignee's incentives. The same tree shows the possible outcomes and decisions an importer or consignee can make at each stage of the importation process. At point A, an importer or consignee with violative food first decides whether to attempt to import the food into the United States. This decision will be influenced by the price the importer or consignee can get for the food if it is successfully imported, the probability the cargo will be inspected, and the cost to the importer or consignee if the food is inspected and found violative. At point B, whether the cargo is inspected is a function of factors such as the port of entry, FDA's inspection rate, and the type of product. If it is found violative, the importer may choose to recondition the food to correct the violations. At point C, FDA refuses admission of the food. If the food is not destroyed, at

point D the importer or consignee may have the option of re-exporting to a foreign country or port shopping.

Illustration 1:



2. The Rule's Effect on Deterrence

Labeling refused imported foods as''UNITED STATES REFUSED ENTRY'' alters the incentive structure that importers and consignees face when deciding whether to introduce their product into United States commerce. In particular, there are four ways that the rule would increase the deterrence value of the FDA inspection system.

a. Port shopping will be reduced. One primary goal of this rule would be to reduce port shopping. Placing a mark on a refused food import will reduce the probability that the refused food import will be re-imported into the United States. The cost of port shopping will increase because resources would have to be expended to repackage a product that has been marked. Thus, port shopping will become relatively less attractive to importers and consignees.

b. Decrease in the value of re-exported items. The value of a product destined for reexport will decrease if it is marked ''UNITED STATES REFUSED ENTRY.'' After the product has been marked, the importer or consignee has two costly choices: (1) Relabel containers or repackage the product into containers that do not bear the mark after the product leaves the United States, or (2) sell the goods abroad with the mark intact. It is likely that such a mark would be viewed less than favorably by food safety inspectors and importers in international markets. Thus, the expected profit from selling goods that are marked would be lower than if the mark did not exist, so this loss is in addition to the loss of value from refusal alone. Either of the importer's or consignee's choices (repackage or sell with the mark intact) would lower the expected profit of reexporting.

c. Reconditioning will become a more favored alternative. The expected profit from reconditioning a refused food import is not likely to change with this rule. Consequently, since the expected profits from port shopping and re-exporting refused food imports are expected to fall, reconditioning the cargo becomes economically more attractive. FDA expects that more importers and consignees will choose to recondition their product.

d. Decrease in the introduction of unsafe food into the United States. As with reconditioning, the expected profit from initially sending a potentially unsafe product to a foreign port is not expected to change significantly with this rule. Therefore, as the expected profit from attempting to import unsafe food into the United States is lowered (because the cost of re-importing and re-exporting unsafe food is increased), the incentive to ship one's product directly to a foreign (non-United States) market is increased. The net result of such a dynamic is that more unsafe food products will either be directly shipped to foreign markets or reconditioned at the point of export.

3. Benefits From The Rule

a. Health benefits. As described earlier, the proposed rule, if finalized, would decrease the number of unsafe imported food products reaching the U.S. consumer. The rule should

discourage attempts to introduce or reintroduce unsafe imported food into the United States and encourage the reconditioning of imported food that FDA has refused to admit for safety reasons. Consequently, U.S. consumers would benefit through a reduction in the number of foodborne illnesses due to unsafe imported foods. Because FDA cannot quantify the amount of illegal re-importation of refused foods, the agency cannot make a definitive prediction of the value of the reduced illnesses arising from this proposed rule. Although foods that represent a direct and serious danger to public health are, in most cases, destroyed,[1] refused food eligible for re-exportation may also present a health hazard. Typical reasons for refusal include illegal food or color additives, pesticide contamination, foreign objects, poor sanitation, and unregistered manufacturers or processes not filed. Each of these reasons for refusal may represent a health risk. Illegal food or color additives can cause allergic reactions in sensitive individuals. These allergic reactions can range from mild contact dermatitis to a severe allergy attack. Also, long-term exposure to some illegal color additives has been linked to cancer. Sanitation problems indicate the food was held in unsanitary conditions, which may indicate more serious problems such as contamination with microbial pathogens. Pesticide contamination may represent a long-term cancer risk. A single exposure to a violative pesticide level is very unlikely to result in cancer, but prolonged exposure over years may lead to increased risk. ''Process not filed'' indicates that FDA has not approved the canning process the manufacturer uses. Without FDA approval, it is not known if the firm is using a canning process that may result in botulism contamination. Although the probability of contamination is low, botulism is a very severe illness that has a high mortality rate.

Table 1 of this document shows some possible illnesses and injuries that can result from unsafe foods and includes their symptoms and an average cost per case. The quality-adjusted life days (QALD) (Ref. 8) column represents the lost utility per day to a consumer from an illness, essentially the loss to the consumer due to symptoms and problems associated with the illness. The QALD's are valued in dollars by multiplying the number of lost days by the value of statistical day, $630 (see 64 FR 36516 at 36523, (July 6, 1999)). This value of a statistical life day is drawn from the economic literature (Ref. 10). The medical cost column is the direct, medical cost of illness, which includes hospitalization and doctor visits. Most illnesses arising from *E. Scherichia coli* O157:H7 or *Salmonella* are self-limiting and short in duration, but some illnesses due to *Salmonella* or *E. coli* O157:H7 can be quite serious. *E. coli* in some cases can result in kidney damage or death. Salmonella can sometimes trigger chronic arthritis and in a very small percentage of cases can result in death.

TABLE 1.—COST OF SOME ILLNESSES POTENTIALLY AVERTED BY THE RULE

Potential Harm	Symptoms	QALD Loss	Dollar Value of Lost QALD's	Medical Costs	Total Cost
Allergens: Contact dermatitis	Reddening, swelling, itching of skin	2.10	$1,325	$125	$1,450
Allergens: Allergic reaction	Difficulty breathing, asthma, rash, possible shock	1.03	$646	$550	$1,196
Objects in food: Simple dental injury	Toothache, headache	0.23	$145	$0	$145
Objects in food: Complex dental injury	Simple, plus infection	3.47	$2,187	$3,540	$5,727
Objects in food: Oral emergency	Sharp pain in mouth, face, neck, bleeding, plus possible metastatic or local infection.	4.27	$2,687	$3,540	$6,227
Objects in food: Tracheo-esophageal obstruction	Choking, difficulty breathing, cyanosis, hypertension	0.48	$304	$0	$304
Objects in food: Esophageal perforation	Pain in chest, bleeding aspiration pneumonia, requires surgery.	13.93	$8,776	$14,160	$22,936
Canning processes: Botulism	Nausea, diplopia, blurred vision, lack of coordination, Can include loss of muscle strength, paralysis, death.	667.94	$420,801	$29,526	$450,327
Filth: Salmonella	Vomiting, nausea, possible arthritis, low probability of death.	24.37	$15,357	$2,289	$17,646
Filth: E. coli	Vomiting, nausea, bloody stools, possible kidney damage, low probability of death.	10.79	$6,797	$4,829	$11,626

[1] Sources: *E. coli* and *Salmonella* costs were taken from ''Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products,'' 963 FR 24254 at 24259-24267, (May 1, 1998).

[2] Objects in food, allergens, and botulism costs were taken from Research Triangle Institute. Estimating the Value of Consumers' Loss from Foods Violating the Federal Food, Drug, and Cosmetic Act.

b. Other consumer benefits. While problems such as insects or filth in food may not always represent a direct health threat, they show that the food was not held in sanitary conditions. Moreover, consumers who purchase food expect it to be clean and sanitary. Consumer research shows cleanliness is important to consumers. For example, the Food Marketing Institute found 89 percent of consumers surveyed ranked a clean, neat store as a very important factor in selecting their primary supermarket. If consumers pay a premium believing their food is sanitary and the food is not, this payment represents a social loss. However, FDA cannot quantify this economic loss because FDA does not know what percentage of the price of food is a ''cleanliness premium.''

4. Costs of the Rule

Costs include both materials and time and would be incurred by both FDA and importers or consignees. The importers and consignees would bear the responsibility for marking; FDA would verify that the mark is affixed to the refused food. It is not clear which method importers and consignees will use to mark refused food imports, so FDA has, for purposes of this analysis, used labeling, an inexpensive and time efficient method, to estimate costs.

a. Materials. Placing labels on all the packages would require the use of a label gun and printed labels. Label guns cost approximately $100, and FDA assumes that three label guns would be needed at each of the 132 ports. Labels reading ''UNITED STATES REFUSED ENTRY'' would also have to be printed

[1] Currently FDA is considering a policy that would recommend the destruction of hazardous food imports. Because dangerous foods may be re-exported without this policy there is the potential for these foods to be port shopped. This proposed rule, if finalized, would then also discourage the re-importation of foods that present a direct hazard to the public health, as well as foods representing an indirect threat, and the rule's benefits would be higher.

at an approximate cost of $0.025 per label.

b. Time—i. Importer's time. The number of hours spent applying labels is a function of the number of rejected shipments and their size. FDA assumes the average shipment consists of 500 cartons and will take approximately 3 hours to mark. FDA also assumes the importer or consignee will hire labor at the average hourly cost for transportation and moving occupations published by the Bureau of Labor Statistics (BLS), $17.64 (BLS, ''Employer Costs for Employee Compensation Summary,'' 1999). Under these assumptions, it will cost approximately $53 in labor (3 hours x $17.64 per hour) to mark each shipment. It is not clear how many shipments will need to be marked. As a baseline, FDA estimates that 7,338 shipments would be marked. However, FDA expects more importers and consignees will decide to recondition after rejection (percent correctable in table 2 of this document), or will not attempt to import previously refused or unsafe food (expected avoidance in table 2 of this document), due to the higher cost of shipments being rejected. The ''static annual cost'' is the cost assuming more of the shipments found violative are corrected at the port. The ''dynamic annual cost'' is the ''static annual cost'' reduced by the percentage decrease (expected avoidance) we expect in initial importation attempts. Based on FDA's experience, the agency can estimate the number of shipments that can be reconditioned rather than re-exported. The percentage of shipments that can be reconditioned is a function of the reason for refusal. Also, the reduction in the number of attempted imports of violative shipments, ''expected avoidance,'' is a function of the ease of correcting the violation before shipment. Again, FDA bases its estimates on the agency's experience. For example, in fiscal year 1999, FDA refused admission to 2,260 shipments because the manufacturer was not registered or the process was not filed. Approximately 80 percent of these shipments can be corrected before importation or at the port by filing for process approval or by registering the manufacturer. This would reduce the number of shipments that could be marked from 2,260 to 452. The cost of marking these shipments would then be $23,925 in labor costs and $5,651 for labels for importers. It would cost FDA $33,229 to confirm the marks had been made. The sum of these costs is $62,805. However, because FDA expects importers and consignees will be less likely to attempt to import unsafe food initially (expected avoidance), FDA then reduces this cost by 50 percent, which is then $31,402. Added to this cost is a fraction of the cost of the label guns. Label guns are durable goods and so the value of a label gun should not be added to the cost of marking each shipment.

ii. FDA inspector's time. The proposed rule would require FDA to confirm that the importer or consignee marks the refused food import. FDA estimates that this process would require approximately 60 minutes in travel time and 30 minutes to confirm marking per shipment. FDA estimates the value of a FDA inspector's time based on a GS-10, step 5 rate, plus 100 percent in overhead. At this hourly rate, FDA's labor costs for each shipment would be $74.

TABLE 2.—ANNUAL LABELING COST ESTIMATES

	Reason for Refusal				
	Manufacturer Not Registered/Process Not Filed	Illegal Food/ Color Additives	Pesticide Contamination	Sanitation	Total Annual Refusals
Estimated refusals	2,260	1,530	873	2,675	7,338
Percent correctable	80%	0%	0%	50%	
Number of refusals to be marked	452	1,530	873	1,337	4,192
FDA Costs.					
FDA hours per refusal	1.5	1.5	1.5	1.5	
FDA hourly rate	$49	$49	$49	$49	
Total FDA cost	$33,229	$112,445	$64,160	$98,297	$308,131
Importer Costs.					
Importer hours per refusal	3	3	3	3	
Importer hourly rate	$17.64	$17.64	$17.64	$17.64	
Label costs	$5,651	$19,123	$10,912	$16,717	
Total importer cost	$29,576	$100,083	$57,106	$87,491	$274,257
Static annual cost	$62,805	$212,528	$121,266	$185,789	$582,388
Expected avoidance	50%	50%	15%	15%	
Dynamic annual cost	$31,402	$106,264	$103,076	$157,921	$398,663

TABLE 3.—FIXED LABELING COSTS

Labeling Guns for Importers	
Number of ports	132
Label guns needed per port of entry	3
Cost per label gun	$100
TOTAL LABEL GUN COSTS = NUMBER OF PARTS X LABEL GUNS NEEDED PER PORT OF ENTRIES X COST PER LABEL GUN	$39,600

TABLE 4.—TOTAL COSTS

Labeling Guns for Importers	
Annual costs	$398,663

TABLE 4.—TOTAL COSTS—Continued

Labeling Guns for Importers	
Other costs	$39,600
TOTAL FIRST-YEAR COSTS	$438,263

c. Diminished value of shipments. Cargo marked ''UNITED STATES REFUSED ENTRY'' will lose value due to diminished value in foreign ports, in addition to the loss of the U.S. market for the product. The importer or consignee suffers an initial loss of value due to rejection of its cargo, regardless of the mark. However, there is an additional loss of value attributable to the marking that is a cost of this rule. This loss of value is a cost of the rule that is borne directly by the importer or consignee, but may be passed on to consumers in the form of higher food prices. This loss ofvalue is difficult to quantify. How the mark decreases the value of the cargo would be a function of the initial value of the cargo, type of product, reason for refusal, and the reluctance of the new buyer to purchase previously refused merchandise.

5. Summary of Benefits and Costs

The uncertain nature of the number of illnesses prevented and the difficulty in quantifying the benefits to consumer of having clean foods, regardless of the danger, prevents a definitive statement about benefits and costs. Because FDA expects the costs to be approximately $438,263, this sets a threshold value for the benefits. If the benefits due to reduced illness and consumer valuation of clean food exceed $438,263, the rule's benefits will exceed its costs.

E. Initial Regulatory Flexibility Analysis

1. Introduction

FDA has examined the economic implication of these proposed rules as required by the Regulatory Flexibility Act (5 U.S.C. 601-612). If a rule would have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities.

2. Economic Effects on Small Entities

The proposed rule, if finalized, would affect many small entities, primarily food importers or consignees. More than 95 percent (1,690 of 1,725 importers identified through a search in Dialog Classic) of food importers are small (Ref. 3) as defined by the Small Business Administration (establishments with less than 100 employees). These small importers or consignees will face a cost of approximately $75 per unsafe food shipment in time and materials. In addition, the value of their unsafe food shipment will fall. This cost is difficult to quantify, but can be bounded by the cost of repackaging the merchandise. FDA does not expect this cost for any one small importer or consignee to be significant, so the agency concludes that this proposed rule does not place a disproportionate burden on small businesses. Furthermore, this cost is borne only by small businesses that attempt to re-import unsafe, and previously refused, foods.

3. Regulatory Options

Exempting small businesses from the proposed rule would lift the burden on small entities. However, since most entities affected by the rule are small, this would effectively negate the rule's purpose. For reasons already discussed in section VII.C of this document, other regulatory options, such as destroying all refused food imports, taking no action, marking some but not all refused food imports, and marking based on geographic origin, are not feasible in light of the proposed rule's purposes. FDA also notes that the proposal contains options (with respect to the method used to affix the mark) for importers and consignees, and importers and consignees whose shipments are refused admission for safety reasons may decide to re-condition, destroy, or re-export an unsafe food import. Given these options available to small entities, FDA did not consider additional options.

4. Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rule

FDA is not aware of any relevant Federal rule which may duplicate or conflict with the proposed rule. The exportation of refused food products must also comply with Customs rules for exportation of refused imports at 19 CFR 12.4, 18.25, 18.26, and 158.45. In addition, Customs routinely orders redelivery of refused merchandise under to the conditions contained in the basic importation and entry bond. Therefore, importers of refused food imports must comply with the bond conditions contained in 19 CFR 113.62, as required by 19 CFR 12.3.

VIII. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this proposal by April 9, 2001. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Bureau of Labor Statistics, Employer Costs for Employee Compensation Summary, http://stats.bls.gov/news.release/ecec.nws.htm (1999).

2. Congressional Hearing, The Safety of Food Imports: Fraud and Deception in the Food Import Process; Hearing Before the Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, September 10, 1998.

3. Dialog Classic. Search of wholesalers who import with SIC codes between 5141 to 5149 that are importers, February 29, 2000.

4. Food and Drug Administration, ''Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rules to Ensure the Safety of Juice and Juice Products,'' (63 FR 24254, May 1, 1998).

5. Food and Drug Administration, ''Preliminary Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis of the Proposed Rule to Require Refrigeration of Shell Eggs at Retail and Safe Handling Labels,'' (64 FR 36516, July 6, 1999).

6. Food Marketing Institute, 1999. Consumer Attitudes and the Supermarket. Research International USA.

7. GAO Report, ''Food Safety: Federal Efforts to Ensure the Safety of Imported Foods are Inconsistent and Unreliable'' (GAO/RCED–98–103).

8. Kaplan, R. M., J. P. Anderson, and T. G. Ganiats, ''The Quality of Well-

Being Scale: Rationale for a Single Quality of Life Index,'' edited by Walker, S. R. and Rosser, R. M., *Quality of Life Assessment: Key Issues in the 1990s*; The Netherlands: Kluwer Academic Publishers, 1993.

9. Mauskopf, J.A., Mt French, A. S. Ross, D. M. Maguire, R. W. Leukrith, Jr., and K. D. Fisher, ''Estimating the Value of Consumers' Loss from Foods Violating the Federal Food, Drug, and Cosmetic Act,'' Research Triangle Report to the Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, September 1988.

10. Viscusi, W. K., ''The Value of Risks to Life and Health.'' *Journal of Economic Literature,* Volume 31, pp. 1912-1946, December 1993.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 352, 355, 360b, 362, 371, 374, 381; 42 U.S.C. 216, 264.

2. Add section 1.98 to subpart E to read as follows:

§ 1.98 Marking of food imports refused entry into the United States.

(a) If you are an importer or consignee and your imported food has been refused admission into the United States for safety reasons and you want to reexport the food, you must mark the refused food, before you reexport it, with the following mark:

Illustration 2

UNITED STATES
REFUSED ENTRY

(b) You must make the mark at least 2.5 cm. or 1 inch high in capital or uppercase letters. The mark must be clear, conspicuous, and permanently affixed. You also must:

(1) Affix the mark to the packing container of the food, if possible, and to an invoice, bill of lading, and any other shipping document accompanying the food when it is exported. For purposes of this rule, a packing container is any contaner used to pack one or more immediate containers of the refused food, and an immediate container is any container which holds an imported food for sale to the ultimate consumer. the term ''packing container'' excludes trailers, railroad cars and similar transportation-related items, and

(2) Affix the mark, under the supervision of a FDA employee or individual designated by FDA, before the food is exported.

(c) You must not:

(1) Import or offer to import any food that has been previously refused admission into the United States and marked as ''UNITED STATES REFUSED ENTRY;'' or

(2) Alter, remove, tamper with, or conceal a ''UNITED STATES REFUSED ENTRY'' mark.

Dated: November 28, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

January 9, 2001,

Timothy E. Skud,

Acting Deputy Assistant Secretary. Department of the Treasury.

[FR Doc. 01–1607 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

RIN 1029–AB95

Abandoned Mine Land (AML) Fee Collection and Coal Production Reporting on the OSM–1 Form

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of the comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM) are reopening and extending the comment period on a proposal to amend our regulations governing Abandoned Mine Land (AML) reclamation fee reporting to allow for the electronic filing of the information required on the OSM–1 Form.

DATES: *Written comments:* We will accept written comments on the proposed rule until 5 p.m., Eastern time, on February 21, 2001.

ADDRESSES: If you wish to comment, you may submit your comments by any one of the following methods. You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, DC 20240. You may also submit comments to OSM via the Internet at: osmrules@osmre.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Spillane, Office of Surface Mining Reclamation and Enforcement, Denver Federal Center, Building 20k, Room B–2005, Denver, Colorado 80225; Telephone 303–236–0330, Ext. 278. E-mail: sspkillan@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information
II. How Would the Electronic Submission Process Work?
III. How Do I Submit Comments on the Proposed Rule?

I. Background Information

On February 15, 2000 (65 FR 7706), we published a proposed rule which would revise our regulations to allow a coal operator (or the entity reporting for the operator) the option of filing the OSM–1 Form electronically. Because of the notary requirement in section 402(c) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), the

proposed rule also required the operator to print out and maintain on file, a properly notarized paper copy of the OSM–1 Form for review by OSM's Fee Compliance auditors. In the proposed rule published on February 15, 2000, section 870.17(b) reads in part as follows: (b) Maintain a properly notarized paper copy of the identical OSM–1 Form for review and approval by OSM's Fee Compliance auditors.

In order to further simplify the process and to make it easier for the operator to store records electronically, we are considering an option which would eliminate the need for the operator to notarize the OSM–1 Form and maintain a paper copy on file. We are considering adopting a final rule which would allow the operator to electronically submit the OSM–1 Form and include a statement made under penalty of perjury that the information contained in the OSM–1 Form is true and correct. The statement would *not* have to be notarized but it would have to be electronically signed, dated, and transmitted to OSM as part of the OSM–1 Form. In the final rule, section 870.17(b) would read as follows: (b) Submit an electronically signed and dated statement made under penalty of perjury that the information contained in the OSM–1 Form is true and correct.

The authority for filing the form without notarization is found in 28 U.S.C. 1746. Section 1746 provides in part:

> Wherever, under any law of the United States or under any rule, regulations, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury and dated, in substantially the following form:
>
> * * * * *
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

The option of using a signed a dated electronic statement made under penalty of perjury in lieu of a notarized statement will facilitate compliance with the requirements of the Government Paperwork Elimination Act (GPEA), Pub. L. 105–277, Title XVII. GPEA requires agencies, by October 21, 2003, to provide for (1) the option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) the use and acceptance of electronic signatures, when practicable. GPEA specifically states that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form.

Comments are also requested on whether in addition to the option being proposed today, we should also retain the notary option published in the **Federal Register** on February 15, 2000. If both options are adopted, the final rule would provide the operator with two choices in addition to the existing process: Either sending the OSM–1 Form data electronically while maintaining a properly notarized paper copy of the OSM–1 Form, or sending the OSM–1 Form data electronically with an electronically signed and dated statement made under penalty of perjury.

As previously stated, the electronic submission of the OSM–1 Form would be an option that is available to the operator. Even if a final rule is adopted which allows the submission of the OSM–1 Form electronically, we would continue to accept the quarterly filing of the OSM–1 Form in paper format with the sworn, notarized statement that is currently in use.

Because 28 U.S.C. 1746 already allows the operator to use an unsworn statement made under penalty of perjury in lieu of a sworn, notarized statement, we are considering modifying the paper form to incorporate an appropriate signature block for this provision. The new paper form, if adopted, would allow the operator to submit either the sworn, notarized statement, or an unsworn statement made under penalty of perjury. We believe that this modification would further simplify reporting requirements for operators. Your comments on this matter are also requested.

How Would the Electronic Submission Process Work?

We intend to develop a website where companies will be able to log in an complete the OSM–1 Form on-line. Access to the website will be controlled by ID and password which will be used as the method of electronic signature. When initially accessing the website, companies will be able to down-load encryption software which is free. The data which is encrypted can be read only by the company and OSM and the data submitted by the company cannot be changed by unauthorized persons. A file transfer protocol (FTP) version of the electronic OSM–1 Form will allow companies with a large number of reporting permits to automate their filing process by transferring their data report files directly from their computer to OSM. The FTP process will use a form of electronic signature called a Public Key Infrastructure (PKI). PKI is a system for encrypting, decrypting, signing and verifying the data transferred electronically. With PKI, the company (user) can obtain a free download of the software for a private signing key. With this key, the user creates a digital signature on an electronic file or encrypts the data. OSM, as the recipient of the file, employs the public key to validate the signature made with the private key or decrypts the data. The two keys are mathematically linked and form a unique pair. Only the public key can validate the signature made with the associated private key(s). This process also verifies that the file has not been altered since its encryption. The companies that use FTP will also need a user identification and password to enable them to print their OSM report from the website after their data is transferred.

II. How Do I Submit Comments on the Proposed Rule?

Written Comments: If you submit written or electronic comment on the proposed rule during the 30-day extended comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for any recommended change(s). Where practical, you should submit three copies of your comments. We may not be able to consider or include in the Administrative Record comments delivered to an address other than those listed above (see **ADDRESSES**).

Electronic Comment: Please submit Internet comments as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Please also include ''Attn: RIN 1029–AB95'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 202–208–2847.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking

record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entity.

Dated: January 16, 2001.

Kathrine L. Henry,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 01–1765 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–00–123]

RIN 2115–AE47

Drawbridge Operation Regulations: Siesta Drive Drawbridge, Gulf Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations of the Siesta Drive drawbridge across the Gulf Intracoastal Waterway, mile 71.6 at Sarasota, Florida. This rule would allow the drawbridge to open only every 20 minutes between the hours of 7 a.m. and 6 p.m., Monday through Friday, except Federal holidays. This action is intended to improve the movement of morning commuter traffic while not unreasonably interfering with the movement of vessel traffic.

DATES: Comments and related material must reach the Coast Guard on or before March 23, 2001.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 406, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07–00–123] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Room 406, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Bridge Branch, 909 SE 1st Ave., Miami, FL 33130, telephone number 305–415–6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–00–123], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave., Room 406, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Siesta Drive bascule bridge is a two lane narrow undivided urban arterial roadway, which is already severely congested due to insufficient capacity. The proposed rule would extend the existing 20 minute weekday schedule to cover the morning commuter period. The bridge opens less than once per hour during this period so the effect on vessels is not considered unreasonable.

Discussion of Proposed Rule

The proposed rule would allow the bridge to start its scheduled openings at 7 a.m. weekdays instead of the present 11 a.m. to 6 p.m. schedule. This should facilitate the movement of commuter traffic across the drawbridge while not unreasonably interfering with the movement of vessel traffic through the drawspans.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The number of openings that occur during the proposed period of additional regulations is less than once per hour and the maximum waiting time would be 20 minutes

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit under the Siesta Key bridge during the hours of 7 a.m. to 11 a.m. on weekdays. This proposed rule would not have a significant economic impact on a substantial number of small entities because the number of openings that occur during the proposed period of additional regulations is less than once per hour and the maximum waiting time would be 20 minutes.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that

they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Branch, Seventh Coast Guard District.

Collection of Information

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

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast

Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.287(b–1) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(b-1) The draw of the Siesta Key bridge, mile 71.6 at Sarasota, shall open on signal, except that from 7 a.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need open only on the hour, twenty minutes past the hour, and 40 minutes past the hour. On weekends and federal holidays from 11 am to 6 pm the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour.

* * * * *

Dated: December 27, 2000.

G.W. Sutton,

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

[FR Doc. 01–1544 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1999–4974]

Port Access Routes; Strait of Juan de Fuca and Adjacent Waters

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The Coast Guard announces the completion of a Port Access Route Study which evaluated the need for modifications to current vessel routing and traffic management measures for the Strait of Juan de Fuca, Haro Strait, Boundary Pass, Rosario Strait, the Strait of Georgia, and adjacent waters. The study was completed in November, 2000. This notice summarizes the study recommendations, which include enhancements to existing vessel routing measures, the addition of new vessel routing measures, and the creation of several new operational procedures.

ADDRESSES: Comments and material received from the public, as well as the actual study and other documents mentioned in this notice, are part of docket USCG–1999–4974 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For further information on this notice, contact Lieutenant Junior Grade Aaron Meadow-Hills, Thirteenth Coast Guard District, telephone 206–220–7215, e-mail ameadows-hills@pacnorwest.uscg.mil; or George Detweiler, Office of Vessel Traffic Management, Coast Guard, telephone 202–267–0416, e-mail gdetweiler@comdt.uscg.mil. For questions on viewing the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: You may obtain a copy of the Port Access Route Study by contacting either person listed under **FOR FURTHER INFORMATION CONTACT** section. A copy is also available in the public docket at the address listed under the **ADDRESSES** section and electronically on the DMS Web Site at http://dms.dot.gov.

Definitions

The following definitions should help you review this notice:

Area to be avoided (ATBA) means a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and which should be avoided by all ships, or certain classes of ships.

Cooperative Vessel Traffic Service (CVTS) means the system of vessel traffic management established and jointly operated by the United States and Canada within adjoining waters. In addition, CVTS facilitates traffic movement and anchorages, avoids jurisdictional disputes, and renders assistance in emergencies in adjoining United States and Canadian waters.

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and

within which the direction of traffic flow may be recommended.

Recommended route means a route of undefined width, for the convenience of ships in transit, which is often marked by centerline buoys.

Regulated Navigation Area (RNA) is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under 33 CFR part 165.

Traffic lane means an area of defined width in which one-way traffic is established. Natural obstacles, including those forming separation zones, may constitute a boundary.

Traffic Separation Scheme (TSS) means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Background and Purpose

When did the Coast Guard Conduct this Port Access Route Study (PARS)?

We announced the PARS in a notice published in the **Federal Register** on January 20, 1999 (64 FR 3145) and completed the PARS in November, 2000.

What is the study area?

The study area encompasses waters in and around the Strait of Juan de Fuca, approximately between longitudes 126°W and 122°40′W, including Admiralty Inlet, Rosario Strait and adjacent waterways, Haro Strait, Boundary Pass and the Strait of Georgia. The study area also includes both U.S. and Canadian TSS's and an ATBA. Portions of the study area are managed jointly by United States and Canadian Coast Guards pursuant to the CVTS agreement.

Why did the Coast Guard conduct this PARS?

The latest Waterways Analysis and Management System (WAMS) report for the Strait of Juan de Fuca, dated June 1995, identified potential measures to improve navigational safety and traffic management efficiency. In 1997, on behalf of the Coast Guard, the Volpe National Transportation Systems Center conducted a broad assessment of the probabilities and consequences of marine accidents in the Puget Sound-area, including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the offshore waters of the Olympic Coast National Marine Sanctuary. This assessment, formally titled ''Scoping Risk Assessment: Protection Against Oil Spills in the Marine Waters of Northwest Washington State'', also known as the ''Puget Sound Additional Hazards Study'' or ''Volpe Study,'' recommended several vessel routing measures for further study, including changes to the offshore approaches to the Strait of Juan de Fuca. Implementation of the changes recommended in these documents requires IMO approval. This is contingent on the completion of a port access route study.

How did the Coast Guard conduct this PARS?

First, we announced the start of the study through a Notice of Study published in the **Federal Register** (64 FR 3145, January 20, 1999). Second, we extended the comment period of the Notice of Study and announced that we would conduct a public meeting through a Notice of Meeting; Extension of Comment Period published in the **Federal Register** (64 FR 18651, April 15, 1999). The public meeting was held on May 12, 1999 as announced. Because of the lack of a substantive number of comments to the original notice and our strong desire to engage the public in the study process, we asked for comments on a number of issues and recommendations. These issues and recommendations were presented in a Notice of Preliminary Study Recommendations with Request for Comments. The notice was published in the **Federal Register** on February 23, 2000 (65 FR 8917). During the comment period we and our Canadian counterparts embarked on a vigorous outreach program that presented the recommendations and solicited comments from a variety of waterway users and other potentially affected/interested groups. We offered to meet with them to explain the PARS Study and solicit their input. Over 300 copies of this **Federal Register** notice (65 FR 8917), with chartlets, were distributed by mail and direct handout.

The recommendations of the PARS are based in large part on comments received to the docket, extensive public outreach meetings, and recent studies such as the Puget Sound Additional Hazards Study, and the North Puget Sound Long-Term Oil Spill Risk Management Study. Heavy reliance was also placed on the expert opinions of the U.S. and Canadian VTS operators and managers.

Study Recommendations

The PARS evaluated 13 separate issues resulting in 28 specific final recommendations intended to improve the safety of vessel traffic in the study area. For the purposes of this notice, we condensed the 28 recommendations into the following list. The actual PARS should be consulted for a detailed explanation of each recommendation. The PARS also contains chartlets of the proposed changes/additions to the TSS. It can be accessed as described in the **ADDRESSES** section of this notice. The PARS recommendations include:

- Mandate use of the TSS for certain classes of vessels.
- Expand the applicability of certain provisions of Rule 10 of the International Regulations for Prevention of Collision at Sea, 1972 (72 COLREGS) along with development of a CVTS reporting system for violations of Rule 10.
- Expand the use of VTS radio frequencies to facilitate passing arrangements.
- Expand the geographic boundaries and the applicability of the existing ATBA located in the vicinity of the Olympic Coast Marine Sanctuary. Retain the voluntary nature of the ATBA.
- Reconfigure and extend the TSS seaward at the entrance to the Strait of Juan de Fuca.
- Modify the location, orientation, and dimensions of the existing TSS in the Strait of Juan de Fuca.
- Create a recommended route south of the TSS in the Strait of Juan de Fuca for smaller, slower moving traffic.
- Relocate the Pilot Area and reconfigure the traffic lanes and precautionary area off Port Angeles to improve traffic flow and reduce risks.
- Establish new vessel operating procedures to improve safety in the U.S. waters off Port Angeles, WA, through an RNA or other appropriate method.
- Change the vessel traffic lanes and precautionary area east of Victoria, British Columbia.
- Establish precautionary areas off Discovery Island and around the Victoria Pilot Station; and reconfigure the TSS connecting the two precautionary areas.
- Create a new two-way traffic lane in Haro Strait and Boundary Pass and establish a precautionary area off Turn Point.
- Create new vessel operating procedures to improve safety in the vicinity of Turn Point through the creation of a Turn Point CVTS Special Operating Area and its rules and procedures.
- Expand Precautionary Area ''RB'' at the south end of Rosario Strait.
- Expand the geographic applicability of the existing Rosario Strait VTS Special Area regulations contained in 33 CFR 161.55 to include Bellingham Channel and other adjacent waters.
- Create a new TSS to link the existing TSS in Georgia Strait, with the exiting TSS north of Rosario Strait and to the east of Succia Island.
- Create new precautionary areas in Georgia Strait off East Point and west of

Delta Port and the Tsawwassen Ferry Terminal.

• Expand the U.S. VMRS requirements to match those of Canada which include all vessels 20 meters or more in length.

Next Steps

The PARS contains a number of recommendations, which will be implemented in various ways by U.S. and Canadian Authorities. A brief synopsis of how the various proposals will proceed towards implementation follows:

1. Changes to the TSS, ATBA, and adding recommended routes will require approval by the International Maritime Organization (IMO). Any changes to the TSS will be accomplished through the rulemaking process.

2. Changes to the U.S. VTS Regulations, including the designation of a VTS Special Area with associated rules, will be accomplished through the rulemaking process.

3. The designation of an RNA with associated rules will be accomplished through the rulemaking process.

4. Changes to aids to navigation resulting from the above actions will be accomplished through standard established procedures, i.e., notification of proposed changes in the Local Notice to Mariners with an opportunity for comment and notification of the final changes.

5. Revisions to the operating procedures for the CVTS will be developed by the Joint Coordinating Group and published in the CVTS Users Manual.

6. Canadian authorities will follow their own, but similar implementation process.

Conclusion

We appreciate the comments we received concerning the PARS. We will provide ample opportunity for additional comments on any recommended changes to existing routing or operational measures that require codification through notices of proposed rulemakings (NPRM's) published in the **Federal Register**.

Dated: January 16, 2001.

R.C. North,

U.S. Coast Guard, Assistant Commandant for Marine, Safety and Environmental Protection.

[FR Doc. 01–1847 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC86

Special Regulations; Areas of the National Park System; Religious Ceremonial Collection of Golden Eaglets From Wupatki National Monument

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) has preliminarily determined that under certain circumstances it is appropriate to allow the Hopi Tribe to collect golden eaglets within Wupatki National Monument, a unit of the National Park System, for religious ceremonial purposes. This rule would authorize this activity upon terms and conditions sufficient to protect park resources against impairment, and consistent with the Bald and Golden Eagle Protection Act.

DATES: Written comments will be accepted by mail, fax, or electronic mail through March 23, 2001.

ADDRESSES: Comments should be addressed to: Kym Hall, National Park Service, 1849 C Street, N.W., Room 7413, Washington, DC 20240. Fax: (202) 208–6756. Email: WASO_Regulations@nps.gov.

FOR FURTHER INFORMATION CONTACT: Sam Henderson, Superintendent, Wupatki National Monument, 6400 N. Highway 89, Flagstaff, Arizona 86004. Telephone: (520) 526–1157. Fax: (520) 526–4259. Email: WUPA_superintendent@nps.gov or Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service, 1849 C Street, N.W., Room 3410, Washington, DC 20240. Telephone: (202) 208–5475. Fax: (202) 208–0870. Email: Pat_Parker@nps.gov

SUPPLEMENTARY INFORMATION:

Existing Regulations

A subsection of NPS regulations, promulgated in 1983, prohibits ''possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state'' living or dead wildlife or fish, plants, paleontological specimens, or mineral resources, or the parts or products of any of these items, except as otherwise provided. 36 CFR 2.1(a).

Another provision of these regulations authorizes NPS to issue permits allowing the collection of national park system resources for research upon certain conditions. 36 CFR 2.5(b). No such permit may be issued except to:

> an official representative of a reputable scientific or educational institution or a State or Federal agency for the purpose of research, baseline inventories, monitoring, impact analysis, group study, or museum display when the superintendent determines that the collection is necessary to the stated scientific or resource management goals of the institution or agency and that all applicable Federal and State permits have been acquired, and that the intended use of the specimens and their final disposal is in accordance with applicable law and Federal administrative policies.

In addition, a permit may not be issued if ''removal of the specimen would result in damage to other natural or cultural resources, affect adversely environmental or scenic values, or if the specimen is readily available outside of the park area.''

Subsection 2.5(c) prohibits issuing a permit to take a specimen that is listed as an endangered or threatened species under state or federal law unless the specimen ''cannot be obtained outside of the park area and the primary purpose of the collection is to enhance the protection or management of the species.'' Subsection 2.5(f) prohibits issuing a research collection permit in park areas where the enabling legislation prohibits the killing of wildlife.

NPS regulations allow a park superintendent to ''designate certain fruits, berries, nuts or unoccupied seashells which may be gathered by hand for personal use or consumption'' if ''the gathering or consumption will not adversely affect park wildlife,'' or otherwise adversely affect the plant species, or park resources. 36 CFR 2.1(c)(1). Another subsection addresses the ceremonial use of NPS resources, stating that the regulations ''shall not be construed as authorizing the taking, use or possession of fish, wildlife or plants for ceremonial or religious purposes, except where specifically authorized by Federal statutory law, treaty rights, or in accordance with § 2.2 [wildlife protection] or § 2.3 [fishing].'' 36 CFR § 2.1(d). The preamble to this rulemaking explained that the provision was added in response to comments that had ''questioned the applicability'' of the regulation in such circumstances, and went on to say:

> The Service recognizes the American Indian Religious Freedom Act directs the exercise of discretion to accommodate Native religious practice consistent with statutory management obligations. The Service intends to provide reasonable access to, and use of, park lands and park resources by Native Americans for religious and traditional

activities. However, the National Park Service is limited by law and regulations from authorizing the consumptive use of park resources. (48 FR 30,252 (1983)).

The Need To Revise the Regulations

In 1999, members of the Hopi Tribe requested permission from the NPS to take golden eaglets from Wupatki National Monument for religious purposes. Citing the National Park Service Organic Act and 36 CFR 2.1, 2.2, and 2.5, the NPS denied the Hopi request. The Assistant Secretary for Fish and Wildlife and Parks then withdrew the NPS denial in order to reconsider the issue. Upon advice of the Solicitor, as explained below, the proposal is being made to change the regulation to allow favorable action on the Hopi request.

The practice of eagle gathering is at the heart of the Hopi religious ceremonial cycle and the Hopi culture. The eagle serves as the link between the spiritual world and the physical world of the Hopi, a connection that embodies the very essence of Hopi spirituality and belief. Golden eaglets are gathered from nests soon after birth and are kept and raised to fledglings in Hopi villages. Later, during the Niman Kachina ceremony, the golden eagles are sacrificed and ''sent'' to their spiritual home. The eagles' feathers are subsequently used in all Hopi religious ceremonies such as the Kachina, Flute, and Snake ceremonies. The cyclical relationship between the eagle and the Hopi is renewed annually through the practice of eaglet gathering, sustaining the connection between the spiritual and physical worlds for the next generation of Hopi.

The importance that the Hopi attach to the ceremonial gathering of eagles is expressed in Article IV of the Tribal Constitution approved by Secretary of the Interior Ickes on December 19, 1936:

> The Tribal Council shall negotiate with the United States Government agencies concerned, and with other tribes and other persons concerned, in order to secure protection of the right of the Hopi Tribe to hunt for eagles in its traditional territories, and to secure adequate protection for its outlying, established shrines.

Only a few of the Hopi clan and religious societies bear the important ceremonial obligation of eagle gathering, and each of these has a traditional area from which it—and no other clan or society that is not related to it—may gather eagles. Hopi clan ownership of traditional eagle nests is well documented in the anthropological literature. ''The nests of eagles near village ruins are owned by the descendants of clans which once lived in their neighborhood.'' Jesse Walter Fewkes, Property Rights in Eagles Among the Hopi, 2 American Anthropologist (n.s.), 690–707, 693 (1900). ''The territory around the Hopi villages where eagles may be found is, and has been from time immemorial, divided into portions or allotments, which are controlled by certain clans or families. These territories extend as far as 50 and 60 miles from the villages.'' H.R. Voth, Notes on the Eagle Cult of the Hopi, collected in H.R. Voth, Brief Miscellaneous Hopi Papers, Field Columbian Museum, Publication 157, 107–109, Anthropological Series 11(2)(1912). Clan ownership of eagle nesting areas corresponds to the early settlement areas and migration routes of the clans before they arrived at their modern villages. The Hopi regard the eagles as embodying the spirits of their ancestors, and the clan areas often contain, or are very close to, Hopi clan ruins.

Anthropologists have described the ''famous nest at Wupatki'' as an important area for traditional eagle gathering by the Hopi. Florence H. Ellis, The Hopi: Their History and Use of Lands (n.d.) 149–154, collected in Hopi Indians (1974). Wupatki National Monument was set aside by President Coolidge in 1924 under the authority of the Antiquities Act, 16 U.S.C. §§ 431–33. The Proclamation is silent on eagle gathering. It identified the purpose of the monument in language common to the time; that is, to reserve and protect ''prehistoric ruins built by the ancestors of a most picturesque tribe of Indians still surviving in the United States, the Hopi or People of Peace.'' Proc. No. 1721 (43 Stat. 1977).

Legal Considerations

The National Park Organic Act created the NPS and defined its purpose in relevant part as follows:

> The service * * * shall promote and regulate the use of the Federal areas known as national parks, monuments and reservations * * * by such means and measures as conform to the fundamental purpose * * * which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. 1.

The 1916 Act further authorizes the Secretary of the Interior to make ''such rules and regulations as he may deem necessary or proper for the use and management of'' the National Park System, and to ''provide in his discretion for the destruction of such animals and of such plant life as may be detrimental to the use of'' units of the National Park System. 16 U.S.C. 3.

In 1978, section 1 of the Organic Act was amended to include these provisions:

> Congress declares * * * [that the] National Park System [shall be] preserved and managed for the benefit and inspiration of all the people of the United States * * * [and] directs that the promotion and regulation of the various areas of the National Park System * * * shall be consistent with and founded in the purpose established by Section 1 * * * to the common benefit of all the people of the United States. The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a–1.

With some exceptions, the NPS has generally prohibited consumptive uses of National Park System resources except as specifically authorized by Congress. Applicable regulations generally prohibit hunting of wildlife, and prohibit removal of plants, paleontological, archeological, cultural or mineral resources, but allow recreational fishing and the collection of fruits, nuts, and berries for personal consumption. See 36 CFR 2.1(a); 2.1(c); 2.2 and 2.3.

Constitutional Considerations and Statutes, Court Decisions, and Executive Orders that Address Indian Religious Ceremonial Concerns

The following discussion explains why we believe applicable laws and policies allow the NPS to accommodate the Hopi's religious ceremonial interest in collecting golden eaglets (*Aquila chrysaeots*) at Wupatki National Monument to the extent it will not result in impairment of the resources protected by the National Park Service Organic Act.

Constitutional considerations. The leading judicial guidance on the intersection between management of federal non-Indian lands and Indian religious practices is *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988). The Supreme Court there made clear that the First Amendment's free exercise clause permits curtailing Indian religious practices on federal lands in appropriate circumstances. See also *U.S.* v. *Hugs,* 109 F.3d 1375 (9th Cir. 1997) (permit requirement of Bald and Golden Eagle Protection Act does not violate free exercise clause when applied to Native

American religious practices, even though it imposed a substantial burden on the practice of Native American religions in which eagles and eagle parts ''play a central role,'' because it was the least restrictive means of serving the compelling governmental interest of protecting eagles, while permitting access to eagles and eagle parts for religious purposes); Regulation of Hardrock Mining (Solicitor's Opinion M #36999, Dec. 27, 1999) (Constitution does not compel rejection of the proposed mining plan on BLM-managed public land even though it would seriously and irreparably degrade a cultural resource of importance to a nearby Indian Tribe). The Constitution does not, in other words, require the National Park Service to accommodate uses, by Indians or others, of national park system resources for religious ceremonial purposes. The Supreme Court also said in *Lyng*, however, that ''the Government's rights to the use of its own land * * * need not and should not discourage it from accommodating [Indian] religious practices * * *'' 485 U.S. at 454. See also Solicitor's Opinion M #36999, at 5. Such accommodations may be undertaken in appropriate cases without raising questions under the establishment clause of the First Amendment. See *Bear Lodge Multiple Use Assoc.* v. *Babbitt,* 175 F.3d 814 (10th Cir. 1999), cert. denied, 2000 WL 305849 (March 27, 2000) (upholding Park Service's encouragement of a voluntary month-long ''no-climb'' period at Devil's Tower National Monument in order to accommodate Indian religious practices); Office of Legal Counsel, Department of Justice, Memorandum to the Secretary of the Interior—Permissible Accommodation of Sacred Sites, September 18, 1996, p. 1 (federal government ''has broad latitude to accommodate the use of sacred sites by federally recognized Indian tribes'' without violating the establishment clause).

Such accommodations may appropriately provide preferences for Indian tribes and their members. Such preferences have unique and deep roots in American law, and may be upheld when similar practices involving others might not pass muster. See, e.g., *Morton* v. *Mancari,* 417 U.S. 535 (1974) (Bureau of Indian Affairs hiring preference for Indians upheld because policy was based on political relationship between Tribes and Federal Government); *Rupert* v. *Director, U.S. Fish & Wildlife Service,* 857 F. 2d 32 (1st. Cir. 1992) (upholding exemption from criminal prosecution for possession of eagle feathers by members of federally recognized tribes); *Peyote Way Church of God* v. *Thornburgh,* 922 F.2d 1210, 1217 (5th Cir. 1991) (upholding statutory exemption from laws prohibiting peyote possession for Native American Church members, the court noting that the federal-tribal relationship ''precludes the degree of separation between church and state ordinarily required by the First Amendment''); *United States* v. *Gibson,* 2000 WL 117987 (11th Cir. Aug. 21, 2000) (limitation of religious use exemption under Bald and Golden Eagle Protection Act to Indians who were members of federally recognized tribes did not violate non-tribal members'' constitutional or statutory free exercise rights).

The Religious Freedom Restoration Act (RFRA). RFRA, enacted in 1993, 42 U.S.C. 2000bb *et seq.,* provides that the government may substantially burden a person's exercise of religion only if the exercise is in furtherance of a compelling governmental interest and it is the least restrictive means of furthering that compelling governmental interest.[1] There is a reasonable argument that the NPS regulations prohibiting collection of golden eaglets in Wupatki National Monument may substantially burden the Hopis' exercise of religion, to the extent that collection of these resources may be regarded as a necessary element in the Hopis' religious ceremony. Whether the prohibition could be sustained under RFRA would depend on whether there is a compelling governmental interest at stake, and whether the prohibition is the least restrictive means of furthering it. Since the NPS is charged with the conservation of wildlife under its Organic Act, 16 U.S.C. 1, it is understood that the NPS has a compelling governmental interest in the absolute bar on the take of wildlife for all purposes except scientific research. There is a question however if this prohibition is the least restrictive means to further that interest. The question becomes more difficult given the Hopi religion's necessity of taking a golden eaglet from a specific location of historical and religious importance, in this instance, Wupatki National Monument. Prohibiting this religious exercise may amount to a substantial burden on their religion. Cf. *Callahan* v. *Woods,* 736 F.2d 1269, 1272 (9th Cir. 1984) (''If the compelling state goal can be accomplished despite the exemption of a particular individual, then a regulation which denies an exemption is not the least restrictive means of furthering the state interest.'') We do not have to reach these questions here, however, if the NPS has the authority to, and has decided to accommodate, the Hopi Tribe's religious ceremonial collection of golden eaglets at Wupatki National Monument. Plainly the RFRA encourages, and does not prohibit, such accommodation.

The American Indian Religious Freedom Act (AIRFA). This Act, enacted in 1978, declares ''the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the[ir] traditional religions * * * including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.'' 42 U.S.C. 1996. The second section of AIRFA, not codified in the U.S. Code, requires the President to direct the various federal agencies responsible for administering relevant laws to ''evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices,'' and directed the President to report to Congress with twelve months of enactment the results of the evaluation. 92 Stat. 469.

The Secretary of the Interior convened a task force of federal agencies, which issued the report called for by Congress. American Indian Religious Freedom Act Report (Federal Agencies Task Force, August 1979). The Task Force discussed, among other things, the problem of restricting the gathering of indigenous natural substances from federal lands for use in Indian religious ceremonies and practices, noting in particular that the ''gathering of a specific plant or animal may be forbidden or limited by conservation statutes.'' *Id.* at 51–53. It recommended that each agency ''accommodate Native American religious practices to the fullest extent possible'' under existing statutes, and also that agencies ''revise existing regulations, policies and practices to provide for separate consideration of any Native American religious concerns * * *. *Id.* at 62–63. The report also recommended that agencies ''provide exemptions from restrictions on access to and gathering, use and possession of federal property for Native American religious purposes similar to those provided for scientific purposes.'' *Id.* at 63.

AIRFA does not create any judicially enforceable rights. *Lyng* v. *Northwest*

[1] The Supreme Court has held that RRA is unconstitutional as applied to state governments, *City of Boerne* v. *Flores,* 521 U.S. 507, 117 S.Ct. 2157 (1997), but the question here is the impact of RFRA on the federal government.

Indian Cemetery Protective Ass'n, 485 U.S. 439, 455, 471 (1988). Courts have, however, construed AIRFA to require federal agencies to:

> learn about, and to avoid unnecessary interference with, traditional Indian religious practices, [and to] evaluate their policies and procedures in light of the Act's purpose, and ordinarily should consult Indian leaders before approving a project likely to affect religious practices. AIRFA does not, however, declare the protection of Indian religions to be an overriding federal policy, or grant Indian religious practitioners a veto on agency action.

Wilson v. *Block*, 708 F.2d 735, 746 (D.C. Cir. 1983) *cert. denied*, 464 U.S. 956 (1983). Thus AIRFA requires federal agencies to consider, but not necessarily to defer to, Indian religious values. *Id.* at 747. See also *Havasupai Tribe* v. *U.S.*, 752 F. Supp. 1471, 1488 (D. Ariz. 1990), *aff'd* 943 F.2d 32 (9th Cir. 1991), *cert. denied*, 503 U.S. 959 (1992); cf. *Lyng, supra*, 485 U.S. at 454.

Executive Orders and other Policy Statements. A 1994 policy statement, and Executive Orders issued in 1996 and 1998, have all promoted government accommodation of Indian religious practices within the limits of agency discretion. President Clinton's ''Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes'' (1994) recognizes the important place eagles occupy in many Native American religious and cultural practices and directs executive departments and agencies to ''work cooperatively with tribal governments and to reexamine broadly their practices and procedures to seek opportunities to accommodate Native American religious practices to the fullest extent under the law.'' 59 FR 22,953 (Apr. 29, 1994).

President Clinton's 1996 Executive Order on Sacred Sites directs that federal agencies:

> shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.

Executive Order 13,007, section 1, 61 FR 26,771 (1996). The Order defines ''sacred site'' as a ''specific, discrete, narrowly delineated location of Federal land'' identified by tribal interests as ''sacred by virtue of its established religious significance to, or ceremonial use by an Indian religion.'' *Id.* § 1(b)(iii). While the Order does not reach directly to the collection of plants or wildlife on federal land for Indian religious purposes, it is suggestive of accommodation where possible. The Departmental Manual implementing the Sacred Sites Executive Order requires Interior agencies to establish procedures that accommodate ''access to and ceremonial use by religious Indian practitioners of Indian sacred sites'' and to ''consult with tribal governments and give full consideration to tribal views in its decision making process.'' 512 DM §§ 3.4(1)(b); 3.7 (1998).

President Clinton's 1998 Executive Order on Consultation and Coordination with Indian Tribal Governments states in pertinent part that ''each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribal government for a waiver of statutory or regulatory requirements.'' No. 13,084, 63 FR 27655 (May 14, 1998). Recently, President Clinton reaffirmed the United States' commitment to consultation with Indian tribal governments and issued Executive Order 13175 (November 6, 2000) which details the process agencies must follow to ensure meaningful and timely input from tribal officials in the development of regulations or policies that have tribal implications.

None of these executive directives purport to (nor could they) provide legal authority to override existing laws such as those that govern management of the national park system. To the extent permitted by law, however, they direct federal agencies to accommodate uniquely Indian needs.

General discussion and conclusion. In light of the statutes, court decisions, executive orders and other legal considerations discussed above, we believe the NPS has a reasonable legal basis for promulgating a regulation that allows the Hopi Tribe to collect golden eaglets at Wupatki National Monument for religious ceremonial purposes. The collection of golden eaglets from specific geographic areas is an important part of the Hopi religion, and there is an ancestral and historical connection between the Hopi Tribe and Wupatki National Monument. The proposed regulation would allow the NPS to include terms and conditions, including gathering times, take limits, and permit tenure, that are sufficient to protect the park resources against impairment, and would require compliance with the Bald and Golden Eagle Protection Act.

The proposed regulation, and the accompanying environmental assessment, applies only to this narrow situation. It is possible that the NPS will receive requests from other tribes for similar rule changes to address their religious practices. Such requests will be addressed on their merits. Any further rule change must follow notice and comment and other procedures required by applicable law. The current proposal is to deal strictly and exclusively with the Hopi Tribe's proposal to collect golden eaglets at Wupatki National Monument.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the National Park Service, Ranger Activities Division, Suite 7408, 1849 C St. NW., Room 7413, Washington, DC 20240. You may also comment via the Internet to WASO_Regulations@nps.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please include ''RIN 1024–AC86'' in your subject line and your name and return address in the body of your message. Finally, you may hand-deliver comments to Kym Hall, National Park Service, 1849 C St. NW., Room 7413, Washington, DC 20240. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Drafting Information: The principal author of this proposed interpretive rule is John Leshy, Solicitor, Department of the Interior.

Compliance With Other Laws

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, OMB has determined the rule not to be significant.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule does not interfere with actions taken or planned by another agency. The Hopi must obtain a permit from the Fish and Wildlife Service before being allowed to collect golden eaglets. However, this rule does not at all affect the standards, times or necessary elements for obtaining that permit. This rule only addresses the ability of the Hopi to collect golden eaglets from Wupatki National Monument after they have received the necessary permit from FWS.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or monetary loan programs or the rights or obligations of their recipients.

(4) This proposed rule may be controversial because it proposes to allow a new collection of wildlife, but it proposes to do so only in very extremely limited circumstances, for a single or very few specimens of a single species of non-endangered wildlife in a single unit of the National Park System for a very narrowly defined purpose by a single entity, and only then when it is determined by the U.S. Fish & Wildlife Service and the National Park Service to be consistent with the laws protecting wildlife and with the laws preventing impairment of natural resources in the National Park System, respectively.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*.). The economic effects of this rule are local in nature and negligible in scope.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule will have no effect on small or large businesses. It addresses only the Hopi Tribe's religious ceremonial collection of golden eaglets at Wupatki National Monument and involves no small businesses. This rule:

1. Does not have an annual effect on the economy of $100 million or more.

2. Does not represent a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The Department has determined that this rule meets the applicable standards provided in section 3(a) and 3(b)(2) of Executive Order 12988.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. No property acquisition or impacts on private property owners are expected due to the administrative nature of the rule. The rule addresses only Hopi collection of golden eaglets from Wupatki National Monument, and no private property rights are involved or affected.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation will not have a substantial direct effect on the states, or on the distribution of power and responsibilities among the various levels of government. The rule addresses only the collection of golden eaglets from Wupatki National Monument, a unit of the national park system, and such activity does not require state activity.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The preamble clearly explains that the rule creates a special exception to 36 CFR 2.1(d) which allows the Hopi to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes subject to conditions sufficient to prevent impairment.

Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties. It does not require submissions under the Paperwork Reduction Act or OMB form 83–I.

National Environmental Policy Act

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A draft Environmental Assessment has been completed. Copies of that assessment may be obtained through one of several methods.

—Internet: http://www.nps.gov/wupa/

—By email: wupa_superintendent@nps.gov

—By mail: Superintendent, Wupatki National Monument, 6400 N. Highway 89, Flagstaff, Arizona 86004.

Public comments regarding the Environmental Assessment may be submitted to Kym Hall, National Park Service, 1849 C Street NW., Room 7413, Washington, DC 20240, by email to WASO_regulations@nps.gov, or by fax at (202) 208–6756. Public comments will be accepted through March 19, 2001.

Government-to-Government Relationship With Tribes

In accordance with the Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249) and 512 DM 2, we have identified potential effects on the Hopi Indian Tribe. The proposed regulation, and the accompanying environmental analysis, applies only to this narrow situation. It is possible that the NPS will receive requests from other tribes for similar rule changes to address their religious practices. Such requests will be addressed on their merits. Any further rule change must follow notice and comment and other procedures required by applicable law. The current proposal is to deal strictly and exclusively with the Hopi Tribe's proposal to collect golden eaglets at Wupatki National Monument. We have consulted with the Hopi Tribe regarding the proposed rule. We will further consider their comments, and the comments of all interested parties, that are received during the comment period.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in body type and is preceded by the symbol ''§'' and a numbered heading; for example, **§ 7.101 Wupatki National Monument** (5) Is the

description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also email the comments to this address: Exsec@ios.doi.gov.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

Accordingly, we propose to amend Part 7 of 36 CFR as set forth below:

PART 7—SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM

1. The table of contents is amended by adding § 7.101 to read as follows:

Sec.

* * * * *

7.101 Wupatki National Monument.

2. The authority for Part 7 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q) 462(k). Sec. 7.96 also issued under D.C. Code 8–137 (1981); D.C. Code 40–721 (1981). Sec. 7.101 also issued under 42 U.S.C. 2000bb; 42 U.S.C. 1996; Executive Orders No. 13084, 13007, 13175.

3. Add § 7.101 to read as follows:

§ 7.101 Wupatki National Monument.

(a) *Collection of golden eaglets from Wupatki National Monument by Hopi Tribe.* Upon terms and conditions sufficient to prevent impairment to park resources, and upon a showing that the Tribe has a valid permit to collect golden eaglets under the Bald and Golden Eagle Act, 16 U.S.C. 668–668d, the Superintendent of Wupatki National Monument shall grant a permit to the Hopi Tribe to collect golden eaglets from Wupatki National Monument for religious ceremonial purposes.

(b) [Reserved].

Dated: January 12, 2001.

Kenneth L. Smith,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 01–1743 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–126–3–7474; FRL–6934–3]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing full approval of revisions to the Vehicle Inspection and Maintenance (I/M) Program for the Dallas/Fort Worth (DFW), Houston-Galveston Area (HGA) and El Paso (ELP) ozone nonattainment areas adopted by the State of Texas. The revisions replace the two-speed idle test in Dallas and Tarrant Counties with ASM–2, expand the upgraded I/M program to cover the entire DFW nonattainment area plus five additional counties, and implement On-Board Diagnostic (OBD) testing in Dallas, Tarrant, Harris, and El Paso Counties. The I/M SIP revision is part of the DFW Attainment Demonstration.

DATES: Comments must be received on or before February 21, 2001.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

What Is the Status of the Current I/M Program in Texas?

A low-enhanced vehicle I/M program called the Texas Motorist Choice (TMC) Program is operating in the Dallas-Fort Worth, Houston, and El Paso ozone nonattainment areas. The program consists of a 2-speed idle test and gas cap test in Dallas, Tarrant, Harris, and El Paso counties, the core counties of the program. In addition, the program has a remote sensing component to identify gross polluters that commute into the core counties from Denton and Collin Counties in the Dallas-Fort Worth area, and from seven surrounding nonattainment counties in the Houston area. An interim conditional approval for this program was proposed on October 3, 1996 (61 FR 51651). An interim final conditional approval was published on July 11, 1997 (62 FR 37138). The conditions were removed from the interim approval on April 23, 1999 (64 FR 19910).

The State submitted an approvable 18-month demonstration on February 8, 1999, as required by the National Highway System Designation Act of 1995 (NHSDA), Public Law 104–59, section 348(c)(1). The program was not fully approved at that time because one provision of the interim approval required that the State provide evidence that the remote sensing program be effective in identifying the shortfall in number of vehicles needed to make up for the lack of a tailpipe testing program in all the nonattainment counties. The State began the remote sensing program in October 1998. Because the State submitted this I/M SIP revision in which it expands geographic coverage, the requirement to cover the shortfall with remote sensing (the final barrier to final full approval) is eliminated when the new I/M tests start in each county in the DFW area.

Why Is the State Submitting This SIP Revision to the I/M Program?

The DFW nonattainment area was bumped up from moderate to serious effective March 23, 1998 (63 FR 8128). An attainment demonstration submitted in March 1999 was found to be incomplete, which started a Federal sanction clock (64 FR 29570, June 2, 1999). This I/M SIP revision was submitted as part of the new DFW attainment demonstration. Modeling has shown that NO_X reductions are essential to reaching attainment in the DFW area. As a result, the Texas Motorist Choice I/M program has been revised to include measurement for NO_X emissions and to provide additional NO_X emission reductions by expanding coverage of the program to all four counties within the nonattainment area (Dallas, Tarrant, Collin and Denton) and selected attainment counties in the DFW Consolidated Metropolitan Statistical Area (CMSA).

What Did the State Submit?

The I/M SIP revision was submitted under a Governor's letter dated April 25, 2000. The State plans to replace the 2-speed idle test in the DFW area with ASM–2, and expand the testing area to include all four nonattainment counties plus five additional counties contiguous to the nonattainment area (Ellis, Johnson, Kaufman, Parker, and Rockwall). The SIP revision contains a narrative, rules, modeling, and supporting documentation as outlined in the requirements of the Federal I/M rules.

What Is an ASM–2 Test?

Acceleration Simulation Mode, known as ASM, operates the vehicle at a steady load and steady speed on a treadmill-type device called a dynamometer. The test more accurately simulates real world driving conditions than the current two-speed idle test. ASM–2 means that the test is performed in both approved testing modes, *i.e.*, operating the vehicle at 50% load at 15 MPH (ASM5015) and then operating the vehicle at 25% load at 25 MPH (ASM2525). The test measures exhaust concentrations for hydrocarbons, carbon monoxide, and NO_X. Pass/fail standards are based on the chassis model year and engine displacement.

EPA's Analysis of Texas's I/M Program

The EPA reviewed the State's proposal against the requirements contained in the Act and Federal I/M rules (40 CFR part 51, subpart S). The submittal was also reviewed for administrative completeness under criteria contained in Federal rules (40 CFR part 51, appendix V). The submittal was found complete in a letter dated June 23, 2000.

The following analysis addresses how the State intends to fulfill the requirements of the Act and the Federal I/M rules. Only the sections of the rule for which the State has made changes are discussed. All other sections of this I/M SIP submittal remain the same as previously approved on an interim basis.

Legal authority for the State to implement the I/M program continues to be granted by Chapter 382 of the Texas Health and Safety Code, and Transportation Code sections 502 and 548.

Section 51.350 Applicability

EPA's regulations establish the minimum geographic scope for nonattainment I/M programs based on nonattainment classification and area population. As stated previously, the Texas Motorist Choice program currently approved in the SIP does not include tailpipe testing throughout the urbanized nonattainment areas. The vehicle shortfall is covered through a remote sensing program.

Beginning January 1, 2001, On-Board Diagnostic (OBD) testing will be added to the low-enhanced, two-speed idle test currently implemented in Harris, Dallas, Tarrant, and El Paso Counties. The shortfall in vehicle coverage for the HGA nonattainment area will continue to be made up by remote sensing within Harris County to identify gross polluting vehicles commuting in from the seven surrounding nonattainment counties. The shortfall in vehicle coverage for the DFW nonattainment area will continue to be made up by remote sensing within Dallas and Tarrant Counties to identify gross polluting vehicles commuting in from Collin and Denton Counties only until tailpipe testing begins in those counties. In prior actions on the Texas I/M SIP, we said the remote sensing program must prove to be effective in identifying and obtaining repairs on the same number of vehicles that would be brought in if the program covered the entire urbanized area. Otherwise, the Texas I/M core program areas (Harris County, Dallas, and Tarrant Counties) must be expanded to include the entire urbanized area. (See, 61 FR 51659 and 62 FR 37141.) The DFW I/M core area is being expanded to include the entire nonattainment area plus five additional counties in the CMSA. An expansion to the entire nonattainment area is currently being proposed by the State for HGA but is not the subject of this notice.

Beginning May 1, 2002, the State commits to begin vehicle testing in Dallas, Tarrant, Collin and Denton Counties utilizing ASM–2 or a vehicle emissions testing program that meets SIP emissions reduction requirements and is approved by EPA. This will be in addition to OBD testing.

Beginning May 1, 2003, the State will expand the I/M program to include the attainment counties of Ellis, Johnson, Kaufman, Parker, and Rockwall. These additional counties will transition from performing just safety inspections plus gas cap pressure testing to also doing OBD and ASM–2 (or other EPA approved) testing as described above.

The State submittal meets the requirements of § 51.350 of the Federal I/M regulation for approval.

Section 51.351–352 Low Enhanced I/M Performance Standard

The State submitted a modeling demonstration using the EPA computer model MOBILE5a__h and localized parameters showing that the low enhanced performance standard can be met for Volatile Organic Compounds (VOCs) and Nitrogen Oxides (NO_X) in the DFW area with the ASM–2 test proposed by the State. The low enhanced performance standard is established in 40 CFR 51.351(g). The State modeled with a test and repair program that assumes a 100 percent credit for network effectiveness, although the compliance rate is estimated at 95 percent. The State submitted an approvable 18-month demonstration on February 8, 1999, as required by the NHSDA that validated the program credit claimed.

The State submittal meets the performance standard requirement of the Federal I/M regulation for approval.

Section 51.354 Adequate Tools and Resources

Section 382.037(e) and (k), of the Texas Health and Safety Code, authorizes the program to charge an emission inspection fee. The SIP narrative also describes the budget, staffing support, and equipment that will be added to the existing personnel and budget needed to implement the program.

The State submittal meets the adequate tools and resources requirements of the Federal I/M regulations for approval.

Section 51.357 Test Procedures and Standards

Vehicles tested in all area programs are also subject to an antitampering check and a gas cap pressure test. Vehicles that are model year 1996 and newer will receive an OBD check. In the DFW I/M program area, vehicles that are model year 1995 and older will be subject to an ASM–2 loaded mode tailpipe test. The State already committed to implementing OBD testing on all 1996 and newer vehicles beginning January 1, 2001, in a SIP revision that was approved April 23, 1999 (64 FR 19910).

The State submittal meets this requirement for vehicle coverage of the Federal I/M rule.

Section 51.358 Test Equipment

The revised I/M SIP describes the ASM–2 test equipment that will be used in the DFW I/M program area. Specifications are included. OBD testing equipment will meet all Federal requirements contained in 40 CFR 85.2207–2231 and Society of Engineers practices in J2962, J1978, and J1979. The OBD equipment will be tethered to the emissions analyzer which will automatically record the data into a central data collection system.

The State submittal meets the requirement for vehicle coverage of the Federal I/M rule.

Section 51.371 On-Road Testing

Vehicles commuting into Dallas and Tarrant Counties from Denton and Collin Counties will continue to be monitored via remote sensing through April 30, 2002. Starting May 1, 2002, all subject vehicles in Collin and Denton County will receive a tailpipe emissions test, as described in this proposal and the revised SIP.

In addition, the State will comply with the on-road testing requirements by continuing to use remote sensing to evaluate the on-road emissions performance of at least 20,000 vehicles (or 0.5 percent of the fleet) subject to emissions testing in all I/M program areas. All probable high-emitting vehicles which are registered within these counties are identified for compliance follow-up.

The State submittal meets the requirement for on-road testing of the Federal I/M rule.

Section 51.373 Implementation Deadlines

The Texas Motorist Choice Program met the November 15, 1997, start date requirement of the NHSDA. The Texas Motorist Choice Program started in July 1996 in Dallas and Tarrant Counties and in January 1997 in Harris and El Paso Counties. It has been operating continuously since that time.

The revised I/M SIP commits to a schedule for start-up of ASM–2 testing activities and OBD testing. All other aspects of this regulation remain the same as previously approved on an interim basis.

The State submittal meets the compliance with implementation plan submission requirements of the Federal I/M regulations for approval.

Notice of Proposed Rulemaking

Our review of this submittal indicates that the proposed SIP revision meets the minimum requirements of the Act and Federal I/M rules. Based upon the discussion contained in the previous analysis sections and in the Technical Support Document accompanying this notice, we find that the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for approval.

We propose to grant full approval of the Texas Motorist Choice I/M program in the DFW area. We also propose to approve the I/M SIP revision pertaining to the Houston-Galveston Area and El Paso nonattainment areas.

Nothing in this action should be construed as permitting, allowing, or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR part 52

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

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

Dated: January 4, 2001.

Gregg A. Cooke,

Regional Administrator, Region 6.

[FR Doc. 01–1519 Filed 1–19–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 534

[Docket No. NHTSA 2001–8668]

RIN 2127–AG97

Fuel Economy Standards—Rights and Responsibilities of Manufacturers in the Context of Changes in Corporate Relationships

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes a new regulation to define the rights and responsibilities of manufacturers under

the agency's corporate average fuel economy program in the context of changes in corporate relationships. The proposed regulation addresses the rights and responsibilities of predecessors and successors, as well the rights and responsibilities of manufacturers in other situations where there have been changes in corporate relationships, e.g., changes in control. Among other things, the proposed regulation would address how fuel economy credits are allocated in these types of situations.

DATES: Comments must be received by March 23, 2001.

ADDRESSES: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590. Alternatively, you may submit your comments to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically. (This website also enables you to view the materials in the docket for this rulemaking.)

You may call Docket Management at 202–366–9324. You may visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

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I. Background

A. Statutory Provisions

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA) in response to the energy crisis created by the oil embargo of 1973–74 and the level of oil imports, particularly from OPEC sources. Congress included a provision establishing an automotive fuel economy regulatory program. That provision added a new Title V, ''Improving Automotive Efficiency,'' to the Motor Vehicle Information and Cost Saving Act. Congress has made various amendments to the fuel economy provisions since 1975, and the fuel economy provisions are now codified in Chapter 329 of Title 49 of the United States Code.

Under Chapter 329, manufacturers are required to meet average fuel economy standards for passenger automobiles and light trucks. While separate fuel economy standards apply for each model year, manufacturers that fail to achieve the level of a standard within a particular model year do not necessarily violate the statute. Instead, under certain circumstances, a shortfall in one year (or years) can be offset if a manufacturer exceeds the standard in another year (or years). Under the Act, manufacturers earn credits for exceeding average fuel economy standards which may be carried back for three model years or carried forward for three model years.

Chapter 329 defines the term ''manufacturer'' as ''a person engaged in the business of manufacturing automobiles, including a predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary * * *'' (The Secretary has delegated responsibility for the automotive fuel economy program to NHTSA. 49 CFR 1.50(f).) To date, we have not issued any regulations concerning predecessors and successors. We have also not issued any regulations concerning the rights and responsibilities of manufacturers in other situations where there have been changes in corporate relationships, *e.g.,* changes in control.

B. Past Positions Taken by NHTSA With Respect to Predecessors and Successors

Under general principles of corporate law, the term ''successor'' ordinarily refers to a corporation which, through amalgamation, consolidation, or other legal succession, becomes invested with the rights and assumes the burdens of another corporation. See Black's Law Dictionary, West Publishing Co.

The automotive fuel economy program contains provisions which raise special issues related to the rights and burdens of predecessors and successors. Of particular significance are the provisions related to credits.

Because credits may be carried backward three years and forward three years, compliance with a fuel economy standard for a particular model year may actually be determined over as much as a seven-year period. A variety of changes in corporate relationships may occur during such a long period, e.g., mergers, acquisitions, spin-offs, etc., and these provisions raise the issue of how credits and shortfalls should be allocated when such changes occur.

In a 1990 letter to Chrysler, we addressed how fuel economy values should be calculated for Chrysler and AMC during the model year in which Chrysler acquired AMC, model year (MY) 1987. We concluded that all of Chrysler's and AMC's vehicles should be treated as manufactured by the same manufacturer for that model year. In reaching this conclusion we stated the following: [1]

> Fuel economy standards apply to passenger automobiles manufactured by a manufacturer, for a particular model year. See section 502(a)(l). Moreover, average fuel economy is calculated based on the total number of passenger automobiles manufactured in a given model year by a manufacturer. See section 503(a)(l). Under section 503(c), the term ''passenger automobiles manufactured by a manufacturer'' includes all automobiles manufactured by persons who control, are controlled by, or are under common control with, such manufacturer.'' Since Chrysler controlled AMC prior to the end of the 1987 model year, and since fuel economy standards apply to particular model years as a whole and not to separate parts of a model year, it is our opinion that all of the vehicles produced by both Chrysler and AMC for model year 1987 shall be treated as if manufactured by the same manufacturer, *i.e.,* placed into one fleet. Otherwise, one or both of the manufacturers would have two separate CAFÉ values, pre-acquisition (or pre-control) and post-acquisition (or post-control), for the same model year.

We also addressed generally the issue of how credits may be applied between predecessors and successors, along with the legal and policy issues associated with applying credits between predecessors and successors. Among other things, we stated the following:

[1] Our 1990 letter referred to the language and section numbers of the Motor Vehicle Information and Cost Savings Act. Those provisions were codified into 49 U.S.C. Chapter 329 by Pub. L. 103–272 (July 5, 1994). Section 1(a) of that law stated that the laws being codified were being done so ''without substantive change''.

We will now address generally the issue of how credits may be used where one manufacturer is the successor of another. In discussing the issue, we will refer to the following hypothetical example: A and B are both car manufacturers. After consolidation, A is the only surviving corporation and is invested with the rights and assumes the burdens of B. Thus, A is the ''successor'' of B.

While this example and subsequent discussion is for passenger automobiles, the relevant requirements concerning the earning and availability of credits are essentially identical for passenger automobile standards and light truck standards. Compare section 502(l)(1)(B) and 49 CFR Part 535, and see 45 FR 83233–36, December 18, 1980. Thus, our analysis for passenger automobile standards is also relevant to light truck standards.

Section 502(l)(1)(B) states:

Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard * * *, such manufacturer shall be entitled to a credit calculated under subparagraph (C), which—

(i) shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(ii) to the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

We note first that credits earned by a particular manufacturer are only ''available to be taken into account with respect to the average fuel economy of *that* manufacturer,'' for any of the three model years before, or after, the model year in which the credits are earned. (Emphasis added.) In the example set forth above, B is no longer a manufacturer under the Cost Savings Act. (Indeed, it is no longer a ''person'' under section 501(8).) Thus, in the absence of some provision concerning ''successors,'' any unused credits that B had earned prior to the consolidation would expire unused, since the only manufacturer to which they are available no longer exists. However, for some purposes B continues to exist as part of A, its ''successor.''

Section 501(8)'s definition of ''manufacturer'' does not provide that the term ''manufacturer'' necessarily includes any predecessor or successor but instead provides that the term does so ''to the extent provided under rules which the Secretary shall prescribe.'' This provision was added by the Automobile Fuel Efficiency Act of 1980 as a conforming amendment to the section concerning modification of local content requirements to encourage domestic production of fuel efficient automobiles and *not* to the section concerning credits. The legislative history does not provide any indication as to why the provision was added, and, to date, NHTSA's administration of the statutory provisions concerning modification of the local content requirements has not turned up a situation for which such rules would be relevant. Should rules be issued under section 501(8), NHTSA would do so by notice-and-comment rulemaking, taking account of the purposes of that section and the statutory scheme as a whole.

Notwithstanding the absence of rules, we do not believe that Congress intended to require the forfeit of a manufacturer's unused credits in a situation where that manufacturer's substance continues to exist as part of a ''successor.'' Thus, taking account of section 501(8) and the statutory scheme as a whole, we conclude that, in the example set forth above, B can be deemed as continuing to exist as part of A, from the time of succession.

This conclusion does not, however, permit the general integration of A's and B's credits and shortfalls. Under section 502(l)(1)(B), credits earned by a particular manufacturer are only ''available to be taken into account with respect to the average fuel economy of *that* manufacturer.'' Since B's existence as part of A only dates from the time of succession, B is not the same manufacturer as A prior to the time of succession. Thus, any credits earned by B would only be available to offset A's shortfalls for the model years during which B exists as part of A, since it is only at that time that the credits earned by B and applied to A can be considered to be taken into account with respect to the average fuel economy of ''that manufacturer.'' Similarly, the only credits earned by A which would be available to B would be those credits earned during the time when B exists as part of A.

The general integration of A's and B's credits would be inconsistent with the basic structure of section 502(l)(1). Assume, for example, that A and B are separate manufacturers for model years 1 through 6, and A is the successor of B for model year 7. If general integration of credits were permitted, credits earned by B in model year 4 could be applied to A's CAFÉ for model years 1–6, as well as model year 7. However, the structure of section 502(l)(1) does not permit this result. Under paragraph (B)(i), any credits earned by B in model year 4 are available to be carried back with respect to B's CAFÉ for any of model years 1, 2 and 3. To the extent that such credits are not so used, paragraph (B)(ii) makes those credits available to be carried forward with respect to B's CAFÉ for any of model years 5, 6 and 7. In order for credits earned by B in model year 4 to be applied to A's CAFÉ for model years 1–6, B's credits would first have to be carried forward to model year 7 (the model year where A is B's successor) and then be carried back to model years 1–6 (for application to A's CAFÉ), a process which has no statutory basis.

We will now apply the general analysis discussed above to the particular facts cited in Chrysler's letter. Prior to MY 1987, Chrysler and AMC were two separate manufacturers. Chrysler acquired AMC during MY 1987, and became the ''successor'' to AMC at that time. Under section 502(l)(1)(B), credits earned by a particular manufacturer are only ''available to be taken into account with respect to the average fuel economy of that manufacturer.'' Since AMC's existence as part of Chrysler only dates from MY 1987, AMC was not the same manufacturer as Chrysler prior to MY 1987. Thus, any credits earned by AMC would only be available to Chrysler to offset CAFÉ shortfalls incurred in the model years during which AMC exists as part of Chrysler, *i.e.,* MY 1987 and thereafter, since it is only at that time that the credits earned by AMC and applied to Chrysler can be considered to be taken into account with respect to the average fuel economy of ''that manufacturer.'' Similarly, the only credits earned by Chrysler which would be available to AMC would be those credits earned during the time when AMC exists as part of Chrysler, *i.e.,* credits earned in MY 1987 and thereafter.

The issue of the extent to which Chrysler could use AMC's credits was subsequently raised in the context of an enforcement proceeding brought by NHTSA staff concerning Chrysler's apparent violation of the light truck CAFÉ standard for MY 1984. On January 8, 1992, DOT Chief Administrative Law Judge John J. Mathias issued an Initial Decision and Order (I.D.) in which he stated that he agreed with the substance of NHTSA Complaint Counsel's position but concluded that the Complaint should be dismissed because NHTSA had not prescribed rules pursuant to section 501(8) of the Act (since recodified at 49 U.S.C. 32901(a)(13)(A)) that define the extent to which the term ''manufacturer'' includes any predecessor or successor of a

manufacturer of automobiles. *CHRYSLER CORPORATION (NHTSA—Fuel Economy Standards Enforcement),* U.S. Dep't. of Transportation, Office of Hearings, Washington, D.C., Docket 47414 (January 8, 1992). Later, NHTSA's Administrator set aside the I.D. and issued an order directing that the agency commence a proceeding to prescribe such rules. *In re CHRYSLER CORPORATION; Corporate Average Fuel Economy Enforcement Proceeding,* U.S. Dep't. of Transportation, National Highway Traffic Safety Administration, Docket No. 47414 (March 31, 1992).

II. Proposal

A. Introduction

Our initial purpose in developing this proposal was to define the extent to which predecessors and successors of manufacturers of automobiles should be included within the term ''manufacturer.'' However, during the development of the proposal, we decided to expand that purpose. We recognized that a number of the issues concerning how credits may be used between predecessors and successors also arise in the context of other changes in corporate relationships, *e.g.,* changes in control. While we could handle issues related to changes in control by interpretation of the statute, we believe it would be helpful for both the industry and the agency to have a regulation in place which provides guidance in this area.

In developing this proposal, we have attempted to achieve two key goals. First, we would like the regulation to be as faithful as possible to the purpose of the statute and the overall statutory scheme. Second, we would like the regulation to be as simple as possible, while still providing the necessary guidance for the agency and the industry to use in determining how changes in corporate relationships are to be considered in determining compliance with fuel economy standards.

The purpose of Chapter 329 is, of course, energy conservation. As to the overall statutory scheme, we believe there are several aspects that are relevant to how we should treat changes in corporate relationships.

First, to promote flexibility, Congress decided to allow compliance with fuel economy standards to be determined over a multi-year period. In particular, a manufacturer may offset a shortfall for any given model year by using credits it has earned or will earn in the three prior model year or three succeeding model years.

Second, Congress limited the use of credits to the manufacturer which earned them; credits may not be bought or sold.

Third, average fuel economy is measured, and compliance with fuel economy standards determined, for groups of companies within a control relationship rather than for individual companies.

We believe that each of these aspects of the statutory scheme needs to be reflected in the regulation concerning the rights and responsibilities of manufacturers in the context of changes in corporate relationships.

As to our desire to keep the regulation as simple as possible, we are concerned that an effort to comprehensively address all of the various ways corporate relationships may change over time could get the agency bogged down in defining endless situations that it would probably never have to deal with in practice. At the same time, we believe there is a need for the regulation to provide the necessary guidance for the agency and the industry to use in determining how changes in corporate relationships are to be considered in determining compliance with fuel economy standards. We are proposing a regulation that we believe would accomplish this. A discussion of the proposed regulation follows.

B. The Proposed Regulation

The proposed regulation is relatively short. It begins by setting forth definitions of several key terms, including predecessor, successor and control relationship. It includes a section which specifically addresses several situations concerning predecessors and successors which have either already occurred or might reasonably be expected to occur. Examples, in the form of specific factual situations, are provided for purposes of clarity. It also includes a section which specifically addresses several potential situations regarding changes in control relationships. The details of the proposed regulation are discussed below. We specifically request comments on whether the regulation should specifically address any additional types of changes in corporate relationships, or provide additional examples in the form of factual situations and, if so, how. To the extent that a situation arose that was not directly addressed by the regulation, the agency would make necessary determinations based on interpretation of the statute and the principles reflected in the regulation.

We note that the proposed regulation would adopt the same positions concerning predecessors and successors as we did in our 1990 letter to Chrysler.

1. Definitions

The proposed regulation includes four definitions.

Control relationship. ''Control relationship'' is defined to mean the relationship that exists between manufacturers that control, are controlled by, or are under common control with, one or more other manufacturers. This definition reflects the provision at 49 U.S.C. 32901(a)(4) which specifies that the automobiles manufactured by a manufacturer include automobiles manufactured by a person that controls, is controlled by, or is under common control with the manufacturer.

Successor. ''Successor'' is defined to mean ''a manufacturer which has become vested with the rights and assumed the burdens of another manufacturer.'' This definition reflects the ordinary corporate law meaning of the term ''successor.''

Predecessor. ''Predecessor'' is defined to mean ''a manufacturer whose rights have been vested in and whose burdens have been assumed by another manufacturer.'' This definition reflects the ordinary corporate law meaning of the term and mirrors the proposed definition for ''successor.''

Identity. Under the proposed regulation, ''identity'' is defined to mean ''the relationship between a predecessor and a successor during the time in which the successor owns 50 percent or more of the assets, based on valuation, that had belonged to the predecessor.'' This is the time when we believe it is reasonable to view the predecessor manufacturer as continuing to exist as part of the successor. The proposed limitation with respect to owning 50 percent or more of the assets is to address a possible situation where one company might purchase another, become the successor, but then quickly sell the assets to a third company. As discussed below, we use the concept of identity, in the context of predecessors and successors, as part of specifications to ensure that credits are only used by a manufacturer which can reasonably be considered to have earned them.

2. Predecessors and Successors

The proposed regulation has four specifications which define the extent to which predecessors and successors of manufacturers of automobiles are included within the definition of ''manufacturer,'' for purposes of the automotive fuel economy program. Examples, in the form of specific factual

situations, are provided for purposes of clarity.

Specification (a). The first proposed specification provides that ''(s)uccessors are responsible for any civil penalties that arise out of fuel economy shortfalls incurred by predecessors.'' We recognize that this specification could be considered unnecessary in the sense that it simply states what follows directly from corporate law: the assumption of the burdens of a predecessor corporation, as well as the vesting of the rights of that corporation, is an inherent part of being a successor under corporate law. However, we believe that any regulation which specifies the extent to which predecessors and successors of manufacturers of automobiles are included within the definition of ''manufacturer,'' for purposes of the automotive fuel economy program, should make this clear at the outset.

Specification (b). The second specification provides that ''(i)f one manufacturer becomes the successor of another manufacturer during a model year, all of the vehicles produced by those manufacturers during the model year are treated as though they were manufactured by the same manufacturer.'' It also provides that ''(a) manufacturer is considered to have become the successor of another manufacturer during a model year if it is the successor on September 30 of the corresponding calendar year and was not the successor for the preceding model year.''

As we discussed in our 1990 letter to Chrysler, fuel economy standards apply to passenger automobiles manufactured by a manufacturer, for a particular model year, and average fuel economy is calculated based on the total number of passenger automobiles manufactured in a given model year by a manufacturer. We recently reiterated that view in a January 13, 2000 letter to Volvo Cars of North America. Since fuel economy standards apply to particular model years as a whole and not to separate parts of a model year, we believe that if one manufacturer acquires another during a model year, they should be deemed the same manufacturer, with a single CAFE value, for that model year.

In a 1990 letter to Ford, we concluded that, for purposes of deciding the model year in which one manufacturer acquires another, the ''traditional model year,'' starting approximately October 1, is the appropriate frame of reference. The second sentence in specification (b) reflects this interpretation.

Specification (c). The third proposed specification provides that ''(c)redits earned by a predecessor may be used by a successor for those model years in which there is an identity between the predecessor and successor, subject to availability of the credits and the general three-year restriction on carrying credits forward.''

As we discussed in our letter to Chrysler, the statute provides that credits are available only to the manufacturer which earned them. Therefore, in the absence of some regulatory provision concerning successors, any unused credits of a predecessor would simply expire unused.

However, we continue to believe that Congress did not intend to require the forfeit of a manufacturer's unused credits in a situation where that manufacturer's substance continues to exist as part of a ''successor.'' We are therefore proposing that credits earned by a predecessor may be used by a successor for those model years in which there is identity between the predecessor and successor.

Credits earned by a predecessor could not, however, be used by a successor for model years in which there was no identity between the predecessor and successor. We believe that, in such a situation, the credits could not reasonably be considered to be used by the manufacturer which had earned them.

The following example helps illustrate how this provision would work in practice:

A purchases B in model year x and becomes the successor of B. A's CAFE in model year x (which includes the combined production of what had been A and B) is less than the applicable CAFE standard for that model year. B had credits at the time of the acquisition because it exceeded the applicable fuel economy standard in the previous model year. The credits of B (the predecessor) could be used by A in model year x, model year x+1 and model year x+2, because there would be an identity between B and A in those model years. However, the credits of B could not be used to offset any shortfall incurred by A in model year x-1 or before, since there was no identity between B and A during those model years.

As indicated above, we believe that the use of B's credits (the predecessor's credits) by A (the successor) for model years x-1 or before (model years before the acquisition) could not reasonably be considered to be use by the manufacturer which had earned them. There was no relationship between A and B model year x-1 and before; they were two completely different manufacturers.

Moreover, as we discussed in our 1990 letter to Chrysler, the statute does not provide for the same credits being carried both forward and backward; *e.g.,* forward to A from before the time it acquired B and then backward to A for the model years prior to the acquisition when A had shortfalls.

Finally, it would be inappropriate to allow A (the successor) to succeed to rights with respect to B's credits that are greater than B had at the time of the acquisition. As of the time of the acquisition, the only right B had with respect to carrying its existing credits backward was the right to apply them to its own fleet; it did not have the right to apply them to the fleets of other manufacturers or to sell them to be applied to such fleets.

Specification (d). The fourth proposed specification provides that ''(c)redits earned by a successor during model years in which there is an identity between the successor and predecessor may be used to offset a predecessor's shortfall, subject to availability of the credits and the general three-year restriction on carrying credits backward.''

Under the statute, a manufacturer that experiences a shortfall which it cannot offset by using credits it has earned during the past three model years has three additional model years to earn offsetting credits. However, given that the statute provides that credits may only be used by the manufacturer that earned them, there would be no way of offsetting a predecessor's remaining shortfalls in the absence of a regulatory provision.

We do not believe that Congress intended to require the forfeiture of a manufacturer's ability to offset CAFE shortfalls by earning future credits simply because it was acquired by another manufacturer; i.e., in a situation where that manufacturer's substance continues to exist as part of a ''successor.'' We are therefore proposing that credits earned by a successor during model years in which there is an identity between the successor and predecessor may be applied to a predecessor's shortfall.

Specifications (c) and (d), taken together, give the successor all the rights the predecessor had with respect to credits, both as to the use of existing credits *and* the ability to earn future credits to offset existing shortfalls. We are aware that some manufacturers would like the successor to somehow have greater rights than those enjoyed by the predecessor. For example, while AMC's rights to its MY 1984 credits, as

of the time of its acquisition in MY 1987, were to apply them to its own fleet in MY 1981–1983 and 1985–1986 (since it had no successor in that time period) and to apply them to itself (as part of Chrysler) in MY 1987, Chrysler, as successor to AMC, wanted to be able to apply AMC's 1984 credits to offset shortfalls incurred by its own (Chrysler's) pre-MY 1987 fleet. However, such use of AMC's credits could not reasonably be considered a use by the manufacturer which had earned them and therefore would be inconsistent with the statute.

We also note that permitting such use of credits would discourage energy conservation. For example, to the extent that a successor had been planning to exceed standards in the future to earn credits that could be carried back to cover pre-acquisition shortfalls, permitting the successor to use the predecessor's previously earned credits to cover those shortfalls would remove the incentive to exceed those standards.

3. Manufacturers within Control Relationships

The proposed regulation has eight specifications concerning the rights and responsibilities of manufacturers within control relationships. These specifications are generally based on the same principles we considered in developing the proposed specifications concerning predecessors and successors. A discussion of the eight specifications follows.

Specification (a). The first proposed specification provides that ''(i)f a civil penalty arises out of a fuel economy shortfall incurred by a group of manufacturers within a control relationship, each manufacturer within that group is jointly and severally liable for the civil penalty.'' This specification follows directly from the statutory provisions which provide that average fuel economy is measured, and compliance with fuel economy standards determined, for groups of companies within a control relationship rather than for individual companies. However, we believe that any regulation which specifies the rights and responsibilities of manufacturers within control relationships should make this clear at the outset. As a practical matter, we would initially seek payment of any civil penalties arising from the fuel economy performance of a group of manufacturers within a control relationship from whoever that group designated as being responsible.

Specification (b). The second proposed specification provides that ''(a) manufacturer is considered to be within a control relationship for an entire model year if and only if it is within that relationship on September 30 of the calendar year in which the model year ends.'' This specification corresponds directly to the proposed specification (b) for predecessors and successors, and reflects the same rationale.

Specification (c). The third proposed specification provides that ''(t)o the extent that a manufacturer within a control relationship was outside that relationship for a previous model year and not within any other control relationship, credits earned by the manufacturer during such model year may be used by the group of manufacturers within the control relationship for those model years in which the manufacturer is within that relationship, subject to the agreement of the manufacturer, the availability of the credits, and the general three-year restriction on carrying credits forward.''

This specification is very similar to the proposed specification (c) for predecessors and successors. If a previously independent manufacturer has been purchased or otherwise brought within a control relationship, its credits do not expire but can continue to be used by it under the same conditions as before. For model years in which it is now part of a group of manufacturers, application of its credits to itself would mean application to the entire group of manufacturers since average fuel economy is measured, and compliance with fuel economy standards determined, for groups of companies within a control relationship rather than for individual companies.

We note that one difference between this proposed specification and the corresponding one we are proposing for predecessors and successors is the statement that use of the credits is subject to the agreement of the manufacturer which earned them. In the case of a predecessor/successor situation, the predecessor no longer exists and the successor has assumed all of its rights and duties. In this situation, however, the previously independent company continues to exist and could have different interests than the group of manufacturers. We therefore believe it is appropriate to make use of the credits subject to the agreement of that company. Similar provisions are included in several of the other proposed specifications for manufacturers within control relationships.

Specification (d). The fourth proposed specification provides that ''(t)o the extent that a manufacturer within a control relationship was outside that relationship for a previous model year and not within any other control relationship, shortfalls incurred by the manufacturer for such model year may be offset by credits earned by the group of manufacturers within the control relationship for subsequent model years in which the manufacturer is within the relationship, subject to the agreement of the other manufacturers, the availability of the credits, and the general three-year restriction on carrying credits backward.''

This specification is very similar to the proposed specification (d) for predecessors and successors.

Specifications (e) through (h). The final four proposed specifications for manufacturers within control relationships address situations in which a manufacturer which is controlled by another manufacturer is sold or otherwise spun off. We note that, given the general trend toward consolidation in the auto industry, this situation appears less likely to arise than the ones discussed earlier. Nonetheless, we believe that there is sufficient possibility that spin-offs may occur that it is reasonable to address spin-offs in the proposed regulation.

The proposed specifications generally provide that a company which has been spun off may use credits that were earned while it was part of a group of manufacturers, subject to the agreement of the other manufacturer or manufacturers in the group. They also generally provide that credits which the spun-off company earns may be carried back to the group of manufacturers for model years in which it was part of the group, subject to the spun-off company's approval.

We recognize that in situations where a manufacturer which is controlled by another manufacturer is sold to a third manufacturer, there is a possibility that the manufacturers might wish to transfer a greater number of credits than can reasonably be considered to be related to the transaction at issue. The following example illustrates such a possibility:

> A, a very large manufacturer with a large credit balance, controls B, a very small manufacturer which only produces vehicles with low fuel economy, by virtue of owning B's stock. A sells B to C, a very large manufacturer with a large credit deficit. C would like to get as many credits as possible in this transaction.

In this situation, we believe it would be reasonable to permit B to take some credits with it. It was part of the group of manufacturers which earned the credits. Moreover, B might be able to argue that it did not improve its fuel economy in the past because it was part

of a group of manufacturers that together exceeded the CAFE standard.

However, given that the statute does not permit the selling of credits, we do not believe it would be reasonable to permit B to take with it a greater number of credits than it could use if it had become independent. B has not produced any vehicles which exceed the fuel economy standard, and, if we permitted a large-scale transfer of credits, the sale of B might be nothing more than a disguised transaction to transfer credits. We have therefore included provisions in the proposed specifications to limit the transfer of credits in this and similar types of situations to numbers that can reasonably be considered to be directly related to the sale of the company at issue.

4. Changes in Corporate Relationships Not Directly Addressed by the Proposed Regulation

We believe the proposed regulation addresses the types of changes in corporate relationships that are most likely to occur. Moreover, we are requesting comments on whether the regulation should specifically address any additional types of changes in corporate relationships, or provide additional examples in the form of factual situations and, if so, how. Depending on the comments, we may include provisions in the final rule addressing additional types of changes in corporate relationships and/or additional examples in the form of factual situations. Since we do not believe it would be possible to comprehensively address every conceivable situation that could arise, the proposed regulation includes a provision stating that to the extent that the regulation does not directly address an issue concerning the rights and responsibilities of manufacturers in the context of a change in corporate relationships, the agency will make determinations based on interpretation of the statute and the principles reflected in the regulation.

C. Supplementary Fuel Economy Reports

One of our regulations, 49 CFR Part 537, Automotive Fuel Economy Reports, requires automobile manufacturers to submit to the agency reports concerning their plans to comply with fuel economy standards. While we are not proposing any changes to Part 537, we would note that successors must submit supplementary reports if required by section 537.8 of that regulation.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document is not economically significant. It was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined to be significant under the Department's regulatory policies and procedures, given the public interest in the automotive fuel economy program.

The proposed regulation would not create any new obligations. It would adopt the same positions concerning predecessors and successors as we have previously taken in interpretation letters.

As discussed earlier in this notice, if we did not adopt regulations governing the use of CAFE credits by predecessors and successors, a predecessor's unused credits would simply expire, since the only manufacturer which could use them would no longer exist. Similarly, there would be no way of offsetting a predecessor's remaining CAFE shortfalls in the absence of some provision concerning successors. The successor would thus be required to pay the predecessor's penalties, a responsibility which it assumed with the rest of the predecessor's obligations, but would have no ability to earn future credits to offset the predecessor's shortfalls.

To address this inequity, the proposed rule, like our prior interpretation, would give the successor all the rights the predecessor had with respect to the use of preexisting credits and the ability to earn future credits.

The proposed provisions concerning the rights and responsibilities of manufacturers in other situations where there have been changes in corporate relationships, e.g., changes in control, are essentially a statement of our interpretation of the statute and reflect the same principles as the provisions relating to predecessors and successors.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) I hereby certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. As discussed above, the proposed regulation would not create any new obligations but would simply adopt the same positions concerning predecessors and successors as we have previously taken in interpretation letters. Similarly, the proposed provisions concerning the rights and responsibilities of manufacturers in other situations where there have been changes in corporate relationships, e.g., changes in control, are essentially a statement of our interpretation of the statute and reflect the same principles as the provisions relating to predecessors and successors. Moreover, as a practical matter, the acquiring corporations most likely to be affected by this regulation are not small businesses.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposed rule would have no substantial effects on the States, or on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). The proposed rule would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have any retroactive effect. However, we would, as a practical matter, consider the regulation in any enforcement action regarding predecessors and successors

that involved conduct that occurred before the regulation became effective.

As discussed earlier, the proposed regulation would not create any new obligations but would adopt the same positions concerning predecessors and successors as we have previously taken in interpretation letters. If we did not adopt special provisions governing the use of CAFE credits by predecessors and successors, a predecessor's unused credits would simply expire, since the only manufacturer which could use them would no longer exist. Similarly, there would be no way of offsetting a predecessor's remaining CAFE shortfalls in the absence of some provision concerning successors.

The proposed rule, like our prior interpretation, would address this inequity and give the successor all the rights the predecessor had with respect to credits. Thus, to the extent we considered and followed the approach of the proposed rule in any enforcement action regarding predecessors and successors that involved conduct that occurred before the regulation became effective, any effect on the amount of penalties would be beneficial for the manufacturers.

We would similarly consider the regulation in any enforcement action regarding other situations where there have been changes in corporate relationships, e.g., changes in control, that involved conduct that occurred before the regulation became effective. However, the proposed provisions are essentially a statement of our interpretation of the statute.

States are preempted from promulgating laws and regulations contrary to the provisions of this rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

This rulemaking action does not include any collections of information.

H. Regulation Identifier Number (RIN)

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

I. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This regulatory action does not meet either of those criteria.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [2] in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. This requirement is not relevant to this rulemaking action.

IV. Submission of Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that

[2] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 534

Fuel economy, Motor vehicles.

In consideration of the foregoing, we propose to amend chapter V of title 49 of the Code of Federal Regulations by adding a new part 534 to read as follows:

PART 534—RIGHTS AND RESPONSIBILITIES OF MANUFACTURERS IN THE CONTEXT OF CHANGES IN CORPORATE RELATIONSHIPS

Sec.

534.1 Scope.
534.2 Applicability.
534.3 Definitions.
534.4 Predecessors and successors.
534.5 Manufacturers within control relationships.
534.6 Situations not directly addressed by this regulation.

Authority: 49 U.S.C. 32901; delegation of authority at 49 CFR 1.50.

§ 534.1 Scope.

This part defines the rights and responsibilities of manufacturers in the context of changes in corporate relationships for purposes of the automotive fuel economy program established by 49 U.S.C. chapter 329.

§ 534.2 Applicability.

This part applies to manufacturers of passenger automobiles and light trucks.

§ 534.3 Definitions.

(a) *Statutory definitions and terms.* All terms used in 49 U.S.C. chapter 329 are used according to their statutory meaning.

(b) As used in this part—

Control relationship means the relationship that exists between manufacturers that control, are controlled by, or are under common control with, one or more other manufacturers.

Identity means the relationship between a predecessor and a successor during the time in which the successor owns 50 percent or more of the assets, based on valuation, that had belonged to the predecessor.

Predecessor means a manufacturer whose rights have been vested in and whose burdens have been assumed by another manufacturer.

Successor means a manufacturer which has become vested with the rights and assumed the burdens of another manufacturer.

§ 534.4 Predecessors and successors.

For purposes of the automotive fuel economy program, ''manufacturer'' includes ''predecessors'' and ''successors'' to the extent specified in paragraphs (a) through (d) of this section.

(a) Successors are responsible for any civil penalties that arise out of fuel economy shortfalls incurred by predecessors.

Example: A purchases B in model year x and is generally invested with the rights and duties of B. B had a fuel economy shortfall two model years before (model year x-2) for which credits are not available and is subject to civil penalties which have not yet been paid. A is responsible for those civil penalties.

(b) If one manufacturer has become the successor of another manufacturer during a model year, all of the vehicles produced by those manufacturers during the model year are treated as though they were manufactured by the same manufacturer. A manufacturer is considered to have become the successor of another manufacturer during a model year if it is the successor on September 30 of the corresponding calendar year and was not the successor for the preceding model year.

(c) Credits earned by a predecessor may be used by a successor for those model years in which there is an identity between the predecessor and successor, subject to availability of the credits and the general three-year restriction on carrying credits forward.

Example: A purchases B in model year x and becomes the successor of B. A's CAFE in model year x (which includes the combined production of what had been A and B) is less than the applicable CAFE standard for that model year. B had credits at the time of the acquisition because it exceeded the applicable fuel economy standard in the previous model year. The credits of B (the predecessor) could be used by A in model year x, model year x+1 and model year x+2, because there would be an identity between B and A in those model years. However, the credits of B could not be used to offset any shortfall incurred by A in model year x-1 or before, since there was no identity between B and A during those model years.

(d) Credits earned by a successor during model years in which there is an identity between the successor and predecessor may be used to offset a predecessor's shortfall, subject to availability of the credits and the general three-year restriction on carrying credits backward.

Example: A purchases B in model year x and becomes the successor of B. B had a fuel economy shortfall two model years before (model year x-2). Any credits earned by A in model year x and model year x+1 could be applied to B's shortfall, since there is an identity between A and B in model year x and model year x+1. However, credits earned by A in any model year before model year x could not be applied to B's shortfall, since there was no identity between A and B in model year x-1.

§ 534.5 Manufacturers within control relationships.

(a) If a civil penalty arises out of a fuel economy shortfall incurred by a group of manufacturers within a control relationship, each manufacturer within that group is jointly and severally liable for the civil penalty.

(b) A manufacturer is considered to be within a control relationship for an entire model year if and only if it is within that relationship on September 30 of the calendar year in which the model year ends.

(c) To the extent that a manufacturer within a control relationship was outside that relationship for a previous model year and not within any other control relationship, credits earned by the manufacturer during such model year may be used by the group of manufacturers within the control relationship for those model years in which the manufacturer is within that relationship, subject to the agreement of the manufacturer, the availability of the credits, and the general three-year restriction on carrying credits forward.

(d) To the extent that a manufacturer within a control relationship was outside that relationship for a previous model year and not within any other control relationship, shortfalls incurred by the manufacturer for such model year may be offset by credits earned by the group of manufacturers within the control relationship for subsequent model years in which the manufacturer is within the relationship, subject to the agreement of the other manufacturers, the availability of the credits, and the general three-year restriction on carrying credits backward.

(e) If a manufacturer which is controlled by another manufacturer is sold or otherwise spun off so that it is no longer within that control relationship and is not within any other control relationship, it may use credits that were earned by the group of manufacturers within the control relationship while the manufacturer was within that relationship, subject to the agreement of the other manufacturers, the availability of the credits and the general restriction on carrying credits forward.

(f) If a manufacturer which is controlled by another manufacturer is sold or otherwise spun off so that it is no longer within that control relationship but is within another control relationship, it may use credits that were earned by the group of manufacturers within the former control relationship while the manufacturer was within that relationship, subject to the agreement of the other manufacturers, the availability of the credits, and the general restriction on carrying credits forward, and subject to a demonstration by the manufacturer, and approved by the Administrator, that the credits to be used are no more than the manufacturer could use if it were not within another control relationship.

(g) If a manufacturer which is controlled by another manufacturer is sold or otherwise spun off so that it is no longer within that control relationship and is not within any other control relationship, credits earned by that manufacturer may be used by the manufacturer or group of manufacturers previously within the control relationship for model years in which the manufacturer was within that relationship, subject to the agreement of the previously controlled manufacturer, the availability of the credits and the general restriction on carrying credits backward.

(h) If a manufacturer which is controlled by another manufacturer is sold or otherwise spun off so that it is no longer within that control relationship but is within another control relationship, credits earned by manufacturers within the latter control relationship for model years in which the manufacturer is within that relationship may be used by the manufacturer or group of manufacturers within the former control relationship for model years in which the manufacturer was within that relationship, subject to the agreement of the group of manufacturers within the latter control relationship, the availability of the credits, and the general restriction on carrying credits backward, and subject to a demonstration by the manufacturer, and approved by the Administrator, that the credits to be used are no more than the manufacturer would have earned if it were not within another control relationship.

§ 534.6 Situations not directly addressed by this regulation.

To the extent that this regulation does not directly address an issue concerning the rights and responsibilities of manufacturers in the context of a changes in corporate relationships, the agency will make determinations based on interpretation of the statute and the principles reflected in the regulation.

Issued on: January 10, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–1524 Filed 1–19–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 554, 573, and 576

[Docket No. NHTSA 2001–8677; Notice 1]

RIN 2127–AI25

Standards Enforcement and Defect Investigation; Defect and Noncompliance Reports; Record Retention

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

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This document requests comments on ways that the National Highway Traffic Safety Administration (NHTSA) may implement the ''early warning reporting requirements'' of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. The TREAD Act directs NHTSA to publish a rule requiring vehicle and equipment manufacturers to report claims data and other information, whether originating in the United States or in a foreign country, that may assist in identifying defects related to motor vehicle safety in vehicles or equipment in the United States. The Act further authorizes NHTSA to require the reporting of other information. These manufacturers must also report to us all incidents, of which they receive notice, involving fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in their products, whether in the United States or abroad, when the possible defective vehicle or equipment is identical or substantially similar to a vehicle or equipment offered for sale in the United States. We intend to issue a notice of proposed rulemaking (NPRM) later in 2001 to amend our procedural regulations on standards enforcement and defect investigation, reporting requirements, and recordkeeping, on the basis of comments we receive in response to this ANPRM.

DATES: Comment closing date: Comments must be received on or before March 23, 2001.

ADDRESSES: All comments on this notice should refer to the docket and notice number set forth above and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The docket room hours are from 9:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact George Person, Office of Defects Investigation, NHTSA (phone: 202–366–5210). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

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SUPPLEMENTARY INFORMATION:

I. Background

A. The Firestone ATX and Wilderness Tire Recall

On August 9, 2000, Bridgestone/Firestone, Inc. (Firestone) announced that it would recall certain ATX, ATXII, and Wilderness AT tires that contained a defect related to sudden tread separation (collectively referred to in this notice as ''the recalled tires''). On August 16, Firestone filed its formal defect report with NHTSA pursuant to 49 CFR part 573. The recall covered P235/75R15 size tires including all ATX and ATX II tires of that size, and all Wilderness AT tires of that size produced at Firestone's Decatur, Illinois, manufacturing plant. At the time, Firestone estimated that approximately 6.5 million of the 14.4 million tires covered by the recall were still in use throughout the United States.

B. Information and Data in the Possession of NHTSA Before May 2, 2000, Related to Possible Safety Problems With Firestone ATX and Wilderness Tires

Between March 1990 and February 2000, NHTSA's consumer complaint database received approximately 46 complaints about Firestone ATX and Wilderness tires (we received additional limited information in July 1998 from State Farm Insurance Company related to insurance claims allegedly involving Firestone ATX tires). Beginning in February 2000, we began to receive additional complaints following a broadcast by a Houston, Texas, television station of a program on the failure of these tires on Ford Explorer vehicles. In March 2000, NHTSA's Office of Defects Investigation (ODI) opened an initial evaluation (IE) to consider whether to open a defect investigation. On May 2, 2000, we opened such an investigation (Investigation No. PE00–020) after having received an additional 44 reports since February 2000. Most of these complaints involved tires installed on Ford Explorer vehicles. None of the complaints covered tires in use outside the United States. The investigation covered over 47 million ATX and Wilderness tires, of various sizes, made in several plants.

C. Information and Data in the Possession of Firestone and Ford Indicating That the Tires Might Contain a Safety-Related Defect

At about the time of the Texas television program in February 2000, Firestone had recorded 193 personal injury claims, 2,288 property damage claims, and was a defendant in 66 law suits related to the tires covered by the investigation. It had also received a number of requests for financial adjustments from consumers who were unhappy with their tires. NHTSA was not aware of these data until after we opened our investigation because Firestone was not required to provide this information to us in the absence of a specific request, and it did not voluntarily provide it.

Ford Motor Company (Ford) had previously taken several actions overseas to address safety problems related to Wilderness tires on Ford Explorer vehicles. In August 1999, Ford offered to replace the P255/70R16 Firestone Wilderness AT tires installed as original equipment on certain Ford Explorer and Mercury Mountaineer models in use in the Persian Gulf region. Ford stated that this action was taken because the tires ''may experience interior tire degradation and tread separation, due to unique Gulf Coast usage patterns and environmental conditions, resulting in a loss of vehicle control.'' Late in February 2000, Ford made a similar offer for almost identical reasons to owners in Malaysia and Thailand of ''certain 1997 Explorers equipped with P235/75R15 Firestone ''All Terrain'' Brand Tires.'' A third offer was made, for the same reasons as the other two offers, in May 2000, to owners in Venezuela covering ''certain 1996 through 1999 Explorers equipped with P235/75R15 or P255/70R16 Firestone 'All Terrain' brand tires.'' Firestone was aware of each of these actions. In none of the three instances did Ford or Firestone notify NHTSA of these actions. Although 49 U.S.C. 30166(f) as implemented by 49 CFR 573.8 would have required Ford to notify us of these actions if they had occurred in the United States, there was no requirement for it to do so because they did not occur in the United States.

D. Federal Safety-Related Defect Reporting Requirements Before the TREAD Act

Title 49, United States Code, Chapter 301—Motor Vehicle Safety, is the basic motor vehicle safety statute administered by NHTSA (the ''Vehicle Safety Act''). Under 49 U.S.C. 30118(c)(1), a manufacturer of a motor vehicle or replacement equipment must notify NHTSA if the manufacturer ''learns the vehicle or equipment contains a defect and decides in good faith that the defect relates to motor vehicle safety.'' [1] As noted in *United States* v. *General Motors Corp. (X-Cars)*, ''a manufacturer incurs its duties to notify [NHTSA] and remedy [the defect] whether it actually determined, or it should have determined, that its vehicles are defective and the defect is safety-related.'' 656 F. 2d 1555, 1559 n. 5 (D.C. Cir. 1987). The *X-Cars* court held that a ''manufacturer cannot evade its statutory obligations that exist when it determines that a defect is safety-related 'by the expedient of declining * * * to reach its own conclusion as to the relationship between a defect in its vehicles and * * * safety.' '' *Id.* (quoting *United States* v. *General Motors Corp.*, 574 F. Supp. 1047, 1050 (D. D.C. 1983).

Prior to the TREAD Act, a manufacturer's automatic (*i.e.,* not in response to NHTSA's information requests under which information is required as part of an investigation) reporting obligations under Section 30166 were established by 49 U.S.C. 30166(f), providing copies of communications about defects and noncompliance, as implemented by 49 CFR 573.8, Notices, bulletins, and other communications. Section 30166(f) provides that:

> A manufacturer shall give [NHTSA] a true or representative copy of each communication to the manufacturer's dealers or to owners or purchasers of a motor vehicle or replacement equipment produced by the manufacturer about a defect or noncompliance with a motor vehicle safety standard * * * in a vehicle or equipment that is sold or serviced.

NHTSA issued a regulation thereunder, 49 CFR 573.8, which specifies that:

> Each manufacturer shall furnish to the NHTSA a copy of all notices, bulletins, and other communications (including those transmitted by computer, telefax or other electronic means, and including warranty and policy extension communiques and product improvement bulletins), other than those required to be submitted by Sec. 573.5(c)(9), sent to more than one manufacturer, distributor, dealer, lessor, lessee, or purchaser, regarding any defect in its vehicles or items of equipment (including any failure or malfunction beyond normal deterioration in use, or any failure of performance, or flaw or unintended deviation

[1] Notification is also required if a manufacturer ''decides in good faith that the vehicle or equipment does not comply with an applicable motor vehicle safety standard issued under this chapter.'' Section 30118(c)(2). These standards are the Federal motor vehicle safety standards (FMVSS) appearing at 49 CFR part 571.

from design specifications), whether or not such defect is safety related. Copies shall be in readable form and shall be submitted monthly, not more than five (5) working days after the end of each month.[2]

However, the statute and regulation did not require manufacturers to provide these documents with respect to actions occurring outside the United States.

E. The TREAD Act (Pub. L. 106–414)

In October 2000, H.R. 5164, the ''Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act'' was passed by the Congress. It was signed by the President on November 1, 2000, Pub. L. 106–414.

In H. R. Rep. 106–954, accompanying H.R. 5164, Congress noted that NHTSA did not have adequate, timely data about Firestone ATX and Wilderness tires:

> First, it is clear that the data available to NHTSA regarding the problems with the Firestone tires was insufficient. While testimony showed that the agency had received some complaints about the tires, both from consumers and from an automobile insurance company, they did not receive data about Ford's foreign recall actions or the internal company data on claims related to this data. * * * The Committee believes that the provisions of this legislation are an initial step toward correcting these problems. (p. 7)

The TREAD Act seeks to ensure that NHTSA receives appropriate data in a timely fashion, including that related to foreign recall actions and internal company data on claims and lawsuits related to defects. It does so in part by amending 49 U.S.C. 30166 to add a new subsection (m), Early warning reporting requirements. Subsection (m) requires NHTSA to initiate a rulemaking proceeding not later than 120 days after enactment of the TREAD Act to establish early warning reporting requirements for manufacturers of motor vehicles and motor vehicle equipment. NHTSA is further required to issue a final rule not later than June 30, 2002.

Sections 30166(m)(3), (4), and (5) specify requirements for, respectively, the reporting elements of early warning, the handling and utilization of reporting elements, and periodic review and update of the final rule.

The crux of the early warning provisions is Section 30166(m)(3), which states:

> (3) Reporting elements.
>
> (A) Warranty and claims data. As part of the final rule * * * the Secretary [of Transportation] shall require manufacturers of motor vehicles and motor vehicle equipment to report, periodically or upon request by the Secretary, information which is received by the manufacturer derived from foreign and domestic sources to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States and which concerns—
>
> (i) data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment; or
>
> (ii) customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment.
>
> (B) Other data. As part of the final rule * * *, the Secretary may, to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States, require manufacturers of motor vehicles or motor vehicle equipment to report, periodically or upon request of the Secretary, such information as the Secretary may request.
>
> (C) Reporting of possible defects. The manufacturer of a motor vehicle or motor vehicle equipment shall report to the Secretary, in such manner as the Secretary establishes by regulation, all incidents of which the manufacturer receives actual notice which involve fatalities or serious injuries which are alleged or proven to have been caused by a possible defect in such manufacturer's motor vehicle or motor vehicle equipment in the United States, or in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.

The TREAD Act thus provides for NHTSA to require manufacturers of motor vehicles and motor vehicle equipment to provide information related to claims for deaths and serious injuries, property damage, communications to customers, other data, and incidents causing fatalities or serious injuries in which a manufacturer's product was involved, caused by possible defects in vehicles or equipment in the United States, or in identical or substantially similar vehicles or equipment in a foreign country. Information provided under the TREAD Act will enhance the ability of NHTSA to be aware of potential safety-related defects as soon as possible. We also anticipate that the Act will provide an incentive to manufacturers to develop or refine internal systems more attuned to analysis of data and early detection of possible safety problems.

The purpose of this ANPRM is to initiate rulemaking on the early warning reporting requirements and to discuss the ways in which NHTSA may best use this information and data to fulfill the statutory goal.

II. General Definitions

Section 30166(m) uses some terms that were originally defined in the National Traffic and Motor Vehicle Safety Act of 1966 (now codified as 49 U.S.C. Chapter 301—Motor Vehicle Safety) and introduces some new ones that have not been defined. The terms defined in Section 30102 that are relevant to this document are:

1. Motor vehicle—''a vehicle driven or drawn by mechanical power and manufactured primarily for use on the public streets, roads, and highways. * * *''
2. Motor vehicle equipment—''(A) any system, part or component of a motor vehicle as originally manufactured; (B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or (C) any device or an article or apparel * * * that is not a system, part, or component of a motor vehicle and is manufactured, sold, delivered, offered, or intended to be used only to safeguard motor vehicles and highway users against risk of accident, injury, or death.''
3. Manufacturer—''a person—(A) manufacturing or assembling motor vehicles or motor vehicle equipment; or (B) importing motor vehicles or motor vehicle equipment for resale.''
4. Defect—''includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.''
5. Motor vehicle safety—''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.''

The terms in Section 30166(m) that have not been defined by Section 30102 and for which we seek to develop a meaning are ''claim,'' ''property damage,'' ''aggregate statistical data,'' ''serious injury,'' and ''substantially similar.'' We shall discuss these terms and their possible meanings in the course of this document.

III. Who Is Covered by the New Reporting Requirements?

The TREAD Act requires information to be submitted by manufacturers of motor vehicles and motor vehicle equipment. We have identified the following categories of manufacturers of vehicles and equipment.

Motor vehicle manufacturers. Domestic vehicle manufacturers are

[2] The notices, bulletins, and other communications required to be submitted by Sec. 573.5(c)(9), which Sec. 573.8 excludes, are those that relate directly to a noncompliance or a safety-related defect that a manufacturer has determined and reported to NHTSA.

manufacturers who produce motor vehicles in the United States, including corporations that are subsidiaries of, or otherwise controlled by, manufacturers incorporated in a country outside the United States. Foreign vehicle manufacturers are manufacturers who produce motor vehicles outside the United States, which are shipped to and sold in the United States. A foreign motor vehicle manufacturer may have a subsidiary in the United States. Multinational motor vehicle manufacturers are manufacturers that produce vehicles in one or more foreign countries and the United States. Some have acquired other motor vehicle manufacturers who continue to produce vehicles under their original nameplates. Some, like Ford Motor Company (which has acquired Volvo, Land Rover, Jaguar, Aston Martin, and Pivco of Norway), are headquartered in the U.S. Others, like DaimlerChrysler AG (which acquired Chrysler Corporation), are headquartered in a foreign country.

Many motor vehicles manufactured in the United States are produced by companies which are U.S. subsidiaries of corporations organized under the laws of other countries (*e.g.*, the Dodge Stratus, manufactured by DaimlerChrysler Corporation which is a subsidiary of DaimlerChrysler AG). A number of other vehicles are produced outside the United States by foreign manufacturers and imported by their U.S. subsidiaries (*e.g.*, Mercedes-Benz passenger cars produced in Germany by DaimlerChrysler AG and imported by Mercedes-Benz USA, Inc.). Where multinational manufacturers do business both in the United States and elsewhere, some vehicles certified for sale in the United States may have counterpart models sold outside the United States (*e.g.*, Mercedes-Benz C Class, Toyota's right-hand drive Camry produced in Kentucky for export to Japan, and Toyota's Echo, sold in other countries as the Yaris). While these models may not be exactly identical to the models sold in the United States, they are similar enough such that in many or most cases, it is likely that defects occurring in counterpart models sold outside the United States will also exist in their U.S. model counterparts. Information about such problems in these foreign vehicles is also subject to the early warning requirements to be specified in our regulations. Thus, for example, if Toyota Motors Ltd. of Japan (the foreign parent) has information about a safety problem on the Yaris that caused a serious injury or that led to a recall or similar campaign in Japan or another foreign country, Toyota USA would be required to report it to us, since it could be an indication of possible problems with the Echo, sold in the United States.

The increasing globalization of the automotive industry in the past decade is likely to result, in the coming years, in various efficiencies and benefits from common platforms and common parts. When this occurs, new and more complex issues may arise about the relationship of defects in derivative vehicles, and whether vehicles and equipment are substantially similar to each other.

The TREAD Act specifically requires vehicle and equipment manufacturers to provide information on safety-related incidents and activities occurring outside the United States. Normally, we would expect this information to be provided through a designated entity in the United States (*e.g.*, the importer or a U.S. manufacturing subsidiary). However, the information could be reported directly by the foreign manufacturer or the foreign portion of a multinational corporation.

Registered Importers. ''Registered Importers (RI)'' import motor vehicles that were not originally manufactured as conforming with the Federal motor vehicle safety standards. These are colloquially known as ''gray market'' vehicles. RIs bring gray market vehicles into conformity, certify their conformity, and sell them. Currently, 99% of the vehicles imported by RIs have been manufactured for the Canadian market. All have virtually identical counterparts in the United States. Such defects as may exist in these Canadian gray market vehicles are, in general, corrected by the manufacturer of the U.S. counterpart, which also honors warranty claims on these vehicles. The sole manufacturer that does not do so is Honda-Acura. Because RIs are not factory-authorized distributors and dealers, it appears unlikely that they will receive and possess warranty data and other information that would be meaningful under the early warning requirements. We seek comments on whether RIs should be included in the early warning reporting requirements.

Miscellaneous motor vehicle manufacturers. The scope of ''manufacturer'' also includes manufacturers of incomplete vehicles as defined by 49 CFR part 568, *Vehicles Manufactured in Two or More Stages*, who have contingent defect reporting responsibilities under 49 CFR 573.3(c). Because a person who alters a certified vehicle is required to affix its own certification under certain conditions, in the same manner as the vehicle's original manufacturer, the early warning reporting requirements could be viewed as applicable as well to alterers who certify.

Motor vehicle equipment manufacturers. There is a wide range of equipment manufacturers. We are considering whether periodic reporting by some manufacturers of motor vehicle equipment is necessary to fulfill the intent of the TREAD Act.

With respect to original equipment (see 49 U.S.C. 30102(a)(7)(A), 49 U.S.C. 30102(b)(1)(C)), there are approximately 14,000 individual items of original equipment in a contemporary passenger car. However, many of these items are not supplied directly to the vehicle manufacturer, but are incorporated into components assembled by a person other than the manufacturer of the part. There is a growing trend to packaging individual parts into a single unit, or module. For example, a steering wheel assembly may include an air bag, horn control, turn signal control, wiper control, ignition switch, cruise control, lighting controls, as well as associated wiring. These units are assembled by a supplier, often with components from various manufacturers. In many instances, a defect in a modular component installed as original equipment is far more likely to come to the direct attention of the vehicle manufacturer than the assembler of the component, or the manufacturers of the component's individual parts.

With respect to ''replacement/accessory equipment'' and ''off-vehicle equipment'' (see generally 49 U.S.C. 30102(a)(7)(B) and 30102(b)(1)(D)), the number of items cannot be estimated at this time. Some are very important from a safety perspective, such as tires and child seats, while others have less of a safety nexus. Although each manufacturer of each of these items of motor vehicle equipment is within the scope of the early warning reporting requirements, as defined by statute, we are considering whether it would be appropriate to have different requirements applicable to different types of equipment manufacturers.

Tires are motor vehicle equipment. With respect to the recall provisions of the Safety Act, 49 U.S.C. 30118–30121, tires are replacement equipment rather than original equipment (49 CFR 579.4(b)(2)). Therefore, tire manufacturers have the duty to conduct notification and remedy campaigns and to address defective or noncompliant tires, including tires installed on new vehicles. Tire brand name owners are also considered manufacturers (49 U.S.C. 30102(b)(1)(E)) and have the

same defect and noncompliance reporting requirements as tire manufacturers under 49 CFR 573.3(d) .

Importers of motor vehicle equipment for resale are also ''manufacturers of motor vehicle equipment.'' A large number of these may not be U.S. subsidiaries of the foreign manufacturer of the product they import (*e.g.*, importers of lighting equipment manufactured in Asia). A defect existing in the equipment they import could relate to safety. These importers could receive warranty or other claims. We see no reason not to apply the early warning reporting requirements to these importers. For example, we tentatively decided that importers of tires that are not affiliated with the actual tire manufacturers should be subject to the same early warning reporting requirements as domestic manufacturers of tires.

In some cases, the importer may be the most likely reporting entity. Although importers may lack engineering expertise, they may be most able to provide information related to returned parts, complaints, claims, and injuries.

Neither the TREAD Act nor its legislative history evidence a Congressional intent to exclude any manufacturer of motor vehicle equipment (or motor vehicles) from the early warning reporting requirements. Nevertheless, we recognize that some items of motor vehicle equipment rarely, if ever, develop a safety-related defect (*e.g.*, exterior and some interior trim, motorcycle rider vests). We recognize that, with respect to such items, only limited reporting may be required. Even though there may not be a safety need to require reporting of a full range of information by such equipment manufacturers, we tentatively believe that a manufacturer of any item of motor vehicle equipment should be required to report to us any claim it receives alleging that a death or serious injury was caused by a defect in its product.

There is a variety of alternative approaches that we might adopt with respect to reporting related to equipment. On one side, we might require reporting of limited kinds of information such as deaths, but not others, such as property damage. On the other side, we might require reporting with regard to only some classes of equipment items. Possible approaches are addressed below.

i. *Reporting initially limited to specific equipment items.* Given the vast number of motor vehicle parts, the questions at present of the types and quantity of data that are pertinent to the early warning reporting requirements, and the data storage and processing systems that may be required within NHTSA, it may be more effective to adopt an incremental approach, and initially to require reports from manufacturers of only a relatively small number of original or replacement equipment items. On the basis of safety-related defects reported in the past five years, we would include tentatively in this category tires, child restraint systems, fuel tanks, air bags and related components, and axle/suspension/brake components on heavy trucks and trailers. We would also include original and replacement equipment manufacturers of seat belt assemblies and air bags and related components such as sensors. Comments are requested on whether we initially should limit our reporting requirements to a subset of equipment manufacturers, and, if so, how that subset should be defined.

ii. *Reporting of equipment items directly covered by the FMVSS.* Initially, or after a period of time in which both industry and NHTSA have had experience with the reporting requirements, these requirements could include or be extended to require all manufacturers of original or replacement equipment that is directly covered by a Federal motor vehicle safety standard (FMVSS) to report on the same basis as vehicle manufacturers as defined by Section 30102(a)(5)(A). This would include, for example, all manufacturers of brake hoses (FMVSS No. 106), lighting equipment (FMVSS No. 108), tires (FMVSS No. 109 and 119), brake fluids (FMVSS No. 116), retreaded tires (FMVSS No. 117), rims for vehicles other than passenger cars (FMVSS No. 120), warning devices (FMVSS No. 125), non-pneumatic temporary spare tires (FMVSS No. 129), glazing (FMVSS No. 205), seat belt assemblies (FMVSS No. 209), child restraint systems (FMVSS No. 213), motorcycle helmets (FMVSS No. 218), rear impact guards (FMVSS No. 223), and compressed natural gas fuel containers (FMVSS No. 304).

iii. *Subsequent extension of reporting requirements to all manufacturers of components that a vehicle manufacturer uses in complying with Federal crash-avoidance and some crash-protection and post-crash standards.* The next tier of equipment manufacturers that might be required to report on the same basis as vehicle manufacturers could be manufacturers of original or replacement equipment which are parts of systems covered by the FMVSS ''100'' series, the ''crash-avoidance'' standards. For example, motor vehicles are required to comply with the braking performance standards (FMVSS Nos. 105, 121, 122, and 135), but the individual components of brake systems (other than brake hoses and brake fluid) are not covered by the FMVSS. Thus, we could apply the early warning requirements to the manufacturer of any component in a motor vehicle brake system (*e.g.*, discs, rotors, brake lining), or any other vehicle system that is covered by any of the Federal ''crash avoidance'' standards (FMVSS Nos. 101–135).

We have had a frequent number of recalls over the past five years because of safety problems with seats, seat backs, and their attachments. Therefore, we could include all components required to comply with FMVSS No. 207, *Seating Systems.* Given the national concern for child safety, we could also add manufacturers of components that a vehicle manufacturer uses to comply with FMVSS No. 225, *Child Restraint Anchorage Systems.*

This approach might also be extended to include components of fuel systems used in vehicles required to comply with FMVSS No. 301, *Fuel System Integrity,* and FMVSS No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles,* because fuel system parts, hoses, fuel lines, and connectors are frequently the subject of recall campaigns. Finally, it is important to post-crash safety that materials used in the interior of vehicles fully conform to FMVSS No. 302, *Flammability of Interior Materials.* We could apply the reporting requirements to manufacturers who provide interior materials to vehicle manufacturers, even though the vehicle manufacturers have the responsibility to certify compliance with FMVSS No. 302.

iv. *Exclusions.* There seems little safety need to require manufacturers of accessory equipment or articles of apparel (other than motorcycle helmets and jack stands) to report to us unless there is a death or serious injury allegedly involving a defect in their products. However, there may be accessories such as tire inflation pressure gauges or battery cables which, if not properly manufactured, could present a safety defect issue, and whose manufacturers should report.

Given the universe of motor vehicle equipment manufacturers, it may be that some will be excluded from the reporting requirements. For instance, the supplier of a part used in a subassembly, though a manufacturer of motor vehicle equipment by definition, might be excluded if there is a historically low recall rate on that subassembly. On the other hand, if the

manufacturer of a relatively insignificant part such as a fastener or bolt becomes aware that it has produced a defective part, that information ought to be reported to us, so that we can decide whether to open a defect investigation with respect to the vehicles in which that part has been used.

Questions to be answered. We seek answers to the following questions relating to who should be covered by the early warning reporting requirements.

A. Which of the manufacturers listed above should be covered by the final rule and why?

B. Are there other entities that should be covered by the reporting requirements and why?

C. Should any of the above manufacturers or other entities be covered by only some reporting requirements and not others?

D. With respect to manufacturers' international feedback mechanisms, to what extent is information provided in the English language? Are there delays in transmitting information such as narrative field reports due to the need to translate it into English? If so, what is the length of delays?

E. What accessories could develop safety-related defects?

IV. What Information and Data Should Be Reported?

Because Section 30166(m) authorizes regulations that will require manufacturers to report to NHTSA information and data which relate to possible defects, the agency anticipates that these regulations will take the form of amendments to 49 CFR part 573, *Defect and Noncompliance Reports.* This could result in renumbering some existing provisions.

The purpose of the early warning reporting requirements is to provide information to NHTSA that will assist in the early detection of possible safety-related defects. We believe that the following information and data are relevant to this purpose:

A. Relevant Information and Data

Warranty claim data. We believe that information about warranty claims can often provide relevant information that indicates the possible existence of a safety defect. ''Warranty data'' appears in the heading of Section 30166(m)(3)(A) as one type of ''reporting element.'' Thus, although it does not explicitly appear in the text of subparagraphs (i) and (ii) of that paragraph, we believe that warranty information is included within its ambit. In any event, warranty data would be included within the scope of ''other data'' whose reporting we can require under Section 30166(m)(30(B).

Vehicle manufacturers have complex systems of warranty coverage, which involve codes that are revised from time to time. There are large numbers of warranty claims. We understand that vehicle manufacturers review warranty information for various reasons including cost control, needed product improvement, billing of suppliers, emissions-related reporting, and safety. We have limited familiarity with original equipment manufacturer warranty systems. We do know that vehicle manufacturers have required original equipment manufacturers to provide reimbursement to manufacturers for warranty costs and for various campaigns. We also have some familiarity with warranty systems used by manufacturers of some types of replacement equipment, such as child seats.

The threshold question is what information about warranty claims may assist in the identification of defects related to motor vehicle safety. We are considering listing in the final rule systems, parts, and components that are particularly safety related. We have reviewed safety-related recalls during the 1995–2000 period and have identified the following parts/components as the most frequent subjects of recall campaigns: fuel systems (15% of all campaigns), brakes (13%), and suspensions (11%). We classify recalls related to restraint systems, seats, instrument panels, gauges, etc. as ''interior systems;'' these have accounted for 14% of the recall campaigns. Beyond this, there are miscellaneous other parts/components each of which comprises less than 10% of all campaigns but which together constitute the remaining 47% of recall campaigns. It seems to us that information on warranty data relating to parts/components that have been the subject of recall campaigns might be significant early warning indicators of possible safety-related defects. We appreciate that over the long run and in the future the current list may be underinclusive because it may not include new technologies. We may amend the final rule at some future time to accommodate new technologies because, historically, defects in newly-developed parts have given rise to a substantial number of safety recalls.

The agency does not want to require the submission of excessive warranty claim information. One mechanism may be to establish cumulative or periodic thresholds below which warranty information would not have to be reported. For example, a manufacturer might not be required to report warranty information on a passenger car component until the warranty claims rate reached x% of production.[3] We might apply a lower threshold if that same component were used on a school bus, *i.e.,* reporting would be required when warranty claims reached only y%. Similarly, there may be specific instances where we would employ much lower thresholds where critical safety components are involved, such as seat belt buckles.

The warranty information that we would find useful is that relating to make, model, model year, and the component or warranty code. The final rule would require each manufacturer to report to us a complete list of relevant warranty codes. However, in order for the agency to effectively use this information, it would be helpful for us to receive it in a standardized manner. Thus, we are considering whether to require some standardization of warranty codings among manufacturers.

Claims and Incidents Involving Serious Injury or Death: Section 30166(m)(3)(A)(i) requires manufacturers to provide information concerning data on claims submitted to a manufacturer for serious injury or death, to the extent that such information may assist in the identification of safety-related defects. Section 30166(m)(3)(C) also requires a manufacturer to report incidents of which it receives actual notice which involve deaths or serious injuries which are alleged or proven to have been caused by a defect, regardless of whether there is a ''claim.'' We believe that to achieve the goals of the TREAD Act, ''claim'' must be construed broadly. For example, we have tentatively concluded that it includes subrogation claims filed by an insurer against a manufacturer. It also includes lawsuits against a manufacturer, whether or not they are preceded by a separate ''claim.'' Some manufacturers may employ outside law firms to handle claims or lawsuits on a routine basis. Manufacturers would be required to report all covered claims against them whether they are being handled by house counsel or outside counsel.

While we do not have information related to foreign mechanisms paralleling domestic claims, we intend to obtain equivalent information from foreign sources. It is not necessary that

[3] We note that the California Air Resource Board (CARB) has implemented such a system with respect to air-quality-emissions components on vehicles sold or registered in California. We are considering whether a similar system might be effective in the early warning of safety defects.

the claim relate to a crash; the Vehicle Safety Act is concerned with non-operational safety as well.

We realize that claims and allegations may be presented against a manufacturer using a wide variety of terms. We also understand that claims may allege in various terms personal injury or death from alleged defects in various items. Sometimes the defect may not be clearly alleged. For example, assume that a person asserts that an air bag deployed in a low-speed parking lot fender bender and a vehicle occupant is seriously injured. Should this be viewed as including an implicit allegation that a safety defect contributed to the occupant's injury and constitute a claim?

At the outset, we are considering requiring that manufacturers only provide summary information, as opposed to a copy of the claim itself. We are considering requiring more information for a lawsuit than for a claim that has not become a suit. One approach would be to require a brief description of the alleged defect giving rise to the complaint, including an identification of the component or system at issue. Other identifying information would include: if a vehicle, the make, model, model year and VIN; if a child seat, the make, model, model number and date of manufacture; if other equipment, the date of manufacture, serial number, and a description of the product; and, if a tire, the brand name, model name, and size, the DOT identification number, and the make, model, and VIN of the vehicle on which it was installed. For lawsuits, we are considering also requiring the case name, case number, identification of court or tribunal where the action is pending (whether in the United States or elsewhere).

Claims for deaths. The statute requires manufacturers to provide data on claims ''for serious injuries (including death).'' Consistent with principles of common law, this would include all deaths that occur within one year of the incident in question.

Claims for serious injuries. The statute does not define ''serious injury'' nor is there any legislative history as to what Congress meant by this term. Injuries may be characterized in a variety of ways in claims. Some could allege simply that an ''injury'' has occurred. Others might allege that the injuries are ''serious'' or ''substantial'' with no further description. Some could specify a specific injury or injuries from which one might infer that an injury was serious.

We believe that it would be valuable to first identify what we believe is a serious injury and then deal with how to assess whether a claim presents a serious injury. A system of rating the severity of motor vehicle crash-related injuries has been developed which aids in establishing uniform data bases for crash injury statistics. This system is the Abbreviated Injury Scale (AIS), which has been in use in the United States for approximately 30 years. The first AIS was published in 1971 under the auspices of the joint Committee on Injury Scaling, comprised of representatives of the American Medical Association (AMA), American Association for Automotive Medicine (AAAM), and the Society of Automotive Engineers (SAE). Since 1976, the AIS has been accepted and used by crash researchers in many parts of the world. It ranks the severity of injuries numerically from 1 to 7: minor, moderate, serious, severe, critical, maximum, injured unknown severity. The injuries recorded are those that occur to the head (cranium and brain), face, neck, thorax, abdomen and pelvic contents, spine, upper extremity, lower extremity, external/skin, and burn injuries and other trauma. Each body area receives a separate report. One possible approach would be to define a ''serious injury'' as one with a level of AIS 3 or higher, which is consistent with the AIS scale. The AIS is explained more clearly in the 2000 NASS Injury Coding Manual, edited for us by Veridian Engineering of Buffalo, NY. We have placed a copy of the Manual in the docket.

Claims that are presented to manufacturers often will not have sufficient information to be classified using the AIS criteria. Some may allege only that the complainant was injured, without stating the nature of the injury or its severity. In these events, a manufacturer will not know initially whether the claim reflects a ''serious injury.'' There are a number of potential ways to address this. One is to require manufacturers to review claims as they are received and attempt to determine whether they involve serious injuries and, if there is insufficient information, to require reassessment after additional information is received (e.g., through follow-up communications or pre-trial discovery). Another is to require a manufacturer to report all claims of injury. Manufacturers may prefer this as relieving them of the need to make subjective determinations, even though the statute only requires them to submit data on claims for ''serious'' injuries.

We note that, notwithstanding this discussion of ''serious injury'' for purposes of the TREAD Act, motor vehicle safety encompasses all injuries, not just those which are above a specified AIS level. Therefore, even if the final rule limits the submission of injury-related information to that which is AIS 3 or above, this is not to be construed to mean that the agency will not conduct defect investigations or seek safety recalls when the AIS level of the injuries caused by a particular defect is likely to be only AIS 1 or 2.

Claims: property damages. Section 30166(m)(3)(A)(i) also requires manufacturers to provide us with ''aggregate statistical data on property damage.'' This provision appears to have been included to address situations similar to that which occurred with Firestone tires, when that company had extensive data on property damage incidents but did not share it with NHTSA. When a claim is submitted to a manufacturer solely for property damage, the manufacturer would not have to provide us with a copy of the claim or full summary information on each individual claim. Rather, we tentatively would require manufacturers to provide such information in an aggregate form at the end of each reporting period, clearly identifying the specific product, item, and/or components that allegedly cause the damage, and informing us of the number of additional property damage claims that were received since the last reporting period. This would be accompanied with a description of the condition leading to the property damage claims, using terms as they are commonly understood (for example, a manufacturer could not fail to report a fire to us if it characterized it as a ''thermal event'' in internal documents, in any instance where there is ignition resulting in an alleged flame). As with warranty claims, we could provide that such reports would only need to be submitted if the number of claims about a particular vehicle, equipment item, or component was above a specified threshold. We also could require these reports to include percentages. For example, a manufacturer might be required to report that ''15% of the total claims in the aggregate alleged property damage are due to fire.''

Field Reports. Manufacturers also receive ''field reports'' from employees and dealers indicating the possible existence of problems. These are often particularly valuable because they provide insights into problems by persons with considerable vehicle expertise. We expect to require ''field reports'' under the ''other data'' provisions of Section 30166(m)(3)(B). The threshold substantive question is what field reports may assist in the identification of defects related to motor

vehicle safety. The information management issues include identifying them and managing narrative field information.

Consumer complaints. Manufacturers often receive complaints from consumers where no injury has occurred. For purposes of this rulemaking proceeding, we intend to construe any communication requesting restitution for an injury or property damage as a ''claim,'' and not as a mere ''consumer complaint.'' Some consumer complaints may be related to safety and might help in an early detection of a possible safety-related defect. These may be particularly important after the expiration of warranties. We would appreciate comments on how they should be evaluated to identify those that are related to safety, and how and whether such complaints should be submitted to us under Section 301166(m)(3)(B).

Information on customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment. Section 30166(m)(3)(A)(ii) requires manufacturers to provide information which concerns ''customer satisfaction campaigns, consumer advisories, recalls, or other activity involving the repair or replacement of motor vehicles or items of motor vehicle equipment'' (In this case, we will use the term ''campaign'' to cover all these different types of actions). While the nexus requirement—''to the extent that such information may assist in the identification of defects related to motor vehicle safety''— must be met, Section 30166(m)(3)(A)(ii) applies regardless of whether a manufacturer has decided that a defect exists, whether or not the conditions or circumstances in question relate to motor vehicle safety. The new section is broader than the current regulation, 49 CFR 573.8 (based on Section 30166(f)), which requires a manufacturer to provide copies of communications regarding ''any defect'' including ''any failure or malfunction beyond normal deterioration in use, or any flaw or unintended deviation from design specifications, whether or not such defect is safety related.''

In our view, this category of information includes any communication to, or made available to, a dealer, distributor, other manufacturer, or more than one owner, whether in writing or by electronic means, relating to replacement or modification of a component, or modification of the way that a vehicle or equipment item is to be operated.[4] However, in addition to the communication itself, we tentatively plan to require the submission of information regarding the facts and analysis that led to the manufacturer's decision to issue the communication.

It should be relatively straightforward to identify whether a campaign has been conducted. With respect to the issue of whether the subject of a ''campaign'' may assist in the identification of defects, we do not believe that the description provided in the communication itself should be dispositive. Some communications may be phrased in a way to avoid any suggestion of a possible defect or a safety relationship. Thus, it may be in the interest of safety to err on the side of inclusiveness and to require a manufacturer to provide copies of all communications with its dealers or customers, written or electronic, when certain components or systems are involved. Of course, we are not interested in financial or marketing information provided to dealers or distributors.

We also note that, in lieu of providing notices in hard copies to their dealers, some manufacturers are posting information about ''campaigns'' and other service information on their internal websites. In order to keep appraised of these ''notices,'' we are considering proposing that manufacturers provide us periodically with a list (and possibly copies) of their electronic postings.

Internal investigations. After receiving field reports, consumer complaints, or other data indicating a potential problem in a vehicle component, manufacturers often initiate internal investigations into the issues which may or may not be concluded with the reporting to NHTSA that a safety-related defect has been determined to exist. In some instances, these investigations may parallel a related NHTSA investigation. We are considering whether to require manufacturers to provide us with information regarding such internal investigations pursuant to Section 30166(m)(3)(B). If we do so, we will need to identify precisely what sort of ''investigations'' are covered, what information we should require about these investigations, and when we would require the information to be submitted.

Changes to components and service parts. When a manufacturer decides to change a part (either as a running change or as a change to a service part), it could signal that the original was underdesigned or overloaded. An example would be an electrical switch that is made more robust or the inclusion of a new relay to reduce the electrical load to eliminate an overheating condition that could lead to a fire. Thus, we are considering requiring the submission of information regarding such changes. Manufacturer communications about changes in products and service procedures can also indicate potential defects. We are considering requiring manufacturers to provide NHTSA with a dealer password so that we can access their internal websites (This access would be limited so that we could not access financial or marketing information). However, some of these changes may bear little relevance to safety issues. If we require manufacturers to provide information regarding design and service parts changes, we will need to decide whether information about all such changes should be provided or only those relating to specified safety components of a vehicle, and the criteria that should be adopted to ensure that we receive the information mot likely to provide early warning of defects.

Remedy failures. We are also considering whether to require manufacturers to provide us with information regarding information concerning instances in which a vehicle or child seat has had to be remedied more than once in the course of a safety recall campaign.

Fuel leaks, fires, and rollovers. We are especially concerned with motor vehicle fuel leaks, fires, and rollovers. We may require manufacturers to provide information on fuel leaks, fires, and rollovers separate from other information.

B. *Vehicles and equipment covered: substantially similar vehicles and equipment in foreign countries.* Pursuant to Section 30166(m)(3)(C), manufacturers must report incidents involving fatalities or serious injuries that are alleged or proven to be caused by a product defect ''in a foreign country when the possible defect is in a motor vehicle or motor vehicle equipment that is identical or substantially similar to a motor vehicle or motor vehicle equipment offered for sale in the United States.'' (This is in addition to the duty to report claims and other information covered by Section 30166(m)(3)(A) that are ''derived from foreign and domestic sources.'')

We interpret the word ''identical'' to mean ''the same as.'' As for ''substantially similar,'' we begin with a

[4] We do not plan to require the submission of information involving disputes with individual owners about possible problems with their vehicles.

recognition that in recent years there has been an increasing amount of commonality among basic platforms, body structure and engines of motor vehicles. If a vehicle is a model that is manufactured in the United States by a domestic manufacturer and certified as conforming to the FMVSS, and the manufacturer produces the same model for sale outside the United States, we would regard the exported model as a ''substantially similar'' motor vehicle for the life of both models, even if there were minor changes to the vehicles shipped abroad (e.g., if Company A produces a model for export for one model year longer than a certified model, that exported model would nevertheless be ''substantially similar'' to the certified models of previous model years). If a motor vehicle is manufactured outside the United States and certified for sale in the United States, and the foreign manufacturer produces the same model (i.e., same exterior body shell and family of engines), for sale in other countries, we would also consider that to be a ''substantially similar'' motor vehicle for the life of both models whether or not there were minor differences. We recognize, however, that there may be issues as to whether differences are ''minor,'' and we seek comments on that subject .

The phrase ''substantially similar'' also appears in Section 30141(a)(1)(A), added by the Imported Vehicle Safety Compliance Act of 1988. This section provides that a RI may import a motor vehicle not originally manufactured to comply with the FMVSS if the NHTSA Administrator decides that the vehicle is ''substantially similar'' to a motor vehicle of the same model year that was certified for sale in the United States.[5] Except for vehicles originally manufactured for sale in Canada, virtually all these decisions have been made pursuant to petitions by RIs. A list of eligible vehicles is published as an appendix following 49 CFR part 593, and periodically during the fiscal year as additional decisions are made. While the list contains a number of vehicles that would be ''substantially similar'' under both Sections 30141 and the early warning reporting requirements of Section 30166(m), it is not exclusive and does not constitute the entire universe of ''substantially similar'' motor vehicles subject to early warning requirements. (The part 593 list also includes some vehicles that are not ''substantially similar'' to vehicles certified for sale in the United States, but that are eligible for importation on the alternative statutory basis that they have safety features that comply or are capable of being altered to comply with the FMVSS).

There may be instances in which vehicles may not be identical or substantially similar but may have components that are identical to those used in a vehicle sold in the United States.

The simpler an item of equipment is, the more likely it is to be identical or substantially similar in the United States and in foreign markets. The phrase ''substantially similar'' applied to motor vehicle equipment raises a question of magnitude given the generic nature of many parts. Most tires can be viewed as substantially similar in a literal sense. One windshield wiper may be viewed as ''substantially similar'' to another. For instance, a windshield wiper installed on a Mercedes A Class car which is not sold in the United States could be considered substantially similar to a wiper on the Mercedes M Class vehicle which is manufactured and sold in the United States. If DaimlerChrysler AG receives information in Germany indicating a potential safety problem with the A Class wiper blades, how relevant would that be to identifying a possible safety problem with wiper blades on a M Class vehicle? The potential for relevance grows if the wiping systems themselves on the two vehicles are identical or substantially similar, or if they are replaceable by the same part.

C. *Cut off dates.* Although a manufacturer is required to notify NHTSA, owners, and dealers if it or the agency determines that a vehicle contains a safety-related defect, it need not provide a remedy without charge if the determination is made more than 10 years after its first sale. See 49 U.S.C. 30120(g), as amended by Section 4 of the TREAD Act. There may be types of information otherwise covered by this rule that, due to the passage of time or other occurrence, need not be provided for safety purposes. If any commenter believes that there should be exclusions based on time, the commenter should provide a detailed rationale for such a belief.

D. *Questions to be answered.* We seek answers to the following questions on the type of information to be reported.

General Questions

1. Which offices of manufacturers receive, classify, and evaluate warranty and claims data, and other data or information, related to deaths, serious injuries, and property damage involving a manufacturer's products that occur in the United States?

2. In what form is that data received and maintained? If it is maintained electronically, please describe the data base system in which it is kept.

3. Is the information referred to in question 1 otherwise classified (for example, warranty codes, lawsuits)? If so, how? By whom is such information evaluated?

4. Do manufacturers in the United States (defined to include importers of vehicles or equipment for resale), currently receive warranty and claims data, and other data or information, related to deaths, serious injuries, and property damage involving their products that occur outside the United States? If so, in what form are these data received?

5. If a manufacturer in the United States does not receive, maintain, and evaluate such data or information referred to in paragraph 3 above, what entity does (*e.g.,* foreign affiliate, factory-authorized importer, outside counsel, other third-party entity)? Do manufacturers require that entity to make periodic reports to it?

6. In what form is foreign the data or information received (*e.g.,* electronically, e-mail, inter-company memo)? Is it maintained separately or is it combined with data about events occurring in the United States?

7. What is the length of time that manufacturers maintain warranty data and claims data? is this period different for data related to events occurring outside the United States?

8. Are U.S. dealers currently collecting and/or maintaining information relevant to early warning reporting? If so, what is this information, and to what extent is it furnished to the manufacturer?

9. Should there be a cut off date for reporting (*e.g.,* not require it regarding vehicles or equipment that are older than some specified age)? If so, what age or ages?

10. Is there additional information or data beyond that mentioned in this notice that manufacturers should report to NHTSA that would assist in the identification of defects related to motor vehicle safety? For example, assembly plant quality reports, dealer feedback summaries, test fleet summary reports, fleet experience, and rental car company reports.

Questions Relating to Claims

1. What is the appropriate definition of ''claim?''

[5] The Administrator must also decide that the vehicle is capable of being readily altered to comply with all applicable FMVSS. The authority to decide extends only to motor vehicles and not to motor vehicle equipment.

2. What information should be submitted (*e.g.,* just the number of claims by make, model year and component or system, or more information, including summaries and names of complainants)?

3. Should NHTSA only require the submission if claims are about problems with certain components? If so, which ones?

4. Should information about all claims involving serious injuries or deaths be submitted, or should there be some threshold?

Questions Relating to Warranties

1. Should warranty data be reported? If so, are there specific categories which should be included or excluded ?

2. How do manufacturers maintain warranty data? How long is it kept? For what purposes is it kept? How do manufacturers review warranty data to identify possible safety concerns?

3. What thresholds, if any, would be appropriate with respect to specific vehicle components, systems, and equipment items, below which warranty information would not have to be reported to NHTSA? Should there be different thresholds for different components or systems?

4. Should thresholds be based solely on claims rates, or should there be some absolute number of claims that would trigger a reporting requirement?

5. What sorts of warranty information should be reported (*e.g.,* make, model, model year, component)?

6. Are there warranty codes common to the motor vehicle industry? Passenger car industry? Heavy truck industry? Motor home industry? Child seat industry? Etc.?

7. Should we require warranty data to be submitted using standardized codes? If so, what level of standardization would be appropriate?

8. In what form should we require warranty information to be submitted?

Questions Relating to Lawsuits

1. What information should be provided about lawsuits?

2. Should information be provided about each lawsuit involving an alleged defect?

3. If not, what threshold would be appropriate? Should there be different thresholds based on the component or system involved?

Questions Relating to Design Changes

1. Should information about design changes be provided? If so, should all changes be covered or just or only those relating to specified components or systems important to vehicle safety? If so, which components or systems?

2. Should different considerations apply to prospective-only running changes than to changes to service parts?

Questions Relating to Deaths and Serious Injuries

1. What systems for characterizing the seriousness of injuries are used in countries other than the United States? How do they relate to the AIS system?

2. Are the AIS3 ''serious'' criteria appropriate as indicia of ''serious injury''? If not, what criteria are appropriate?

3. How shall it be determined whether a claim pertaining to an injury pertains to a serious injury? What assumptions should be made? If an initial claim does not allege a ''serious'' injury, should the manufacturer be required to report the claim later if it learns that the injury was serious or alleged to be serious?

4. Would manufacturers find it less burdensome to report to NHTSA all allegations of injury caused by a product defect?

5. How and to which office of a manufacturer are deaths and serious injuries reported? Is the answer different with respect to incidents that occur in foreign countries?

Questions Relating to Property Damage

1. What data should manufacturers include as ''aggregate statistical data''?

2. What type of statistical data relating to property damage (including fire and corrosion) do manufacturers maintain? What corporate office is responsible for their maintenance? Is the answer different with respect to incidents and claims in foreign countries?

3. How is this data maintained by manufacturers? How is it used?

4. How should this data be submitted to NHTSA to best provide an early warning of potential safety defects?

Questions on Internal Investigations

1. Should a manufacturer be required to report information on active investigations that it has initiated with respect to potential defects in its vehicles or equipment? How, if at all, should it be determined that these are safety related? What is the extent to which this information should be reported?

2. What is an appropriate definition of an internal investigation that should be reported to NHTSA?

3. Should manufacturers be required to report such investigations as soon as they are commenced? If not, at what point should the investigation be reported to NHTSA?

Questions on Customer Satisfaction Campaigns, Etc.

1. Should ''customer satisfaction campaigns,'' ''consumer advisories,'' ''recalls'' or ''other activities involving the repair of motor vehicles or motor vehicle equipment'' be defined in NHTSA's regulation, and, if so, what would be an appropriate definition for each of these terms?

2. How many and what kind of customer satisfaction campaigns, consumer advisories, recalls, or other activity involving repairs have occurred since January 1, 1998, that were not required to be reported to NHTSA under 49 CFR 573.8? Indicate whether these occurred in the United States or foreign countries. Please submit a copy of all communications provided to consumers or dealers with respect to each such campaign, advisory, recall, or other activity.

Questions on Identical and ''Substantially Similar'' Motor Vehicles and Equipment

1. Is the word ''identical'' understood internationally, or do we need to define it? If so, how?

2. How should a manufacturer determine if a vehicle sold in a foreign country is ''substantially similar'' to vehicles sold in the United States? Is it enough that the vehicles share the same platform and/or engine family? If not, why not?

3. How should ''substantially similar'' motor vehicle equipment be defined? Would the definition be different with respect to individual parts, component parts, assemblies and systems? Other than tires and off-vehicle equipment (such as child seats), should the definition be restricted to replacement equipment for substantially similar motor vehicles?

Questions on Field Reports

1. What is an appropriate definition for ''field report''?

2. In the context of field reports for which information is to be provided, should there be a list of systems, parts, and components that are safety related? Should it be the same as the list for warranty claims and other claims?

3. Do manufacturers screen field reports for safety-related information? If so, what are their systems and how do they work?

4. How do manufacturers process and maintain field reports? Is all information entered into computers?

5. What information regarding field reports should be provided NHTSA? Should there be a numerical or rate threshold before field reports must be provided?

V. When should information be reported?

Section 30166(m)(3)(A) and (B) state that the information covered by those paragraphs shall be reported ''periodically or upon request'' by NHTSA. Section 30166(m)(3)(C) states that the information covered by that paragraph shall be reported ''in such manner as [NHTSA] establishes by regulation.''

A. *Periodically.* The statute authorizes us to require periodic reporting by manufacturers of information related to the early warning of defects. Some types of information may be more significant than other (*e.g.,* deaths allegedly caused by safety defects) and justify a more frequent period of reporting than other types.

1. *Upon receipt of information*—We are considering proposing that any manufacturer of motor vehicles or motor vehicle equipment report to us within two weeks of its receipt of information alleging or demonstrating that a fatality has occurred due to a defect in one of its products. This would be an episodic report providing certain information when the manufacturer receives it, rather than a report containing information that accumulates within a specific period of time.

2. *Monthly.* Problems arising in certain types of motor vehicles or equipment may require more frequent reporting than others, especially where an accumulation of claims or warranty data has reached whatever threshold for reporting that we eventually set. Defect-related information concerning school buses, emergency vehicles, child restraints, automatic restraint systems, seat belts, and fuel systems seems critical to us. We may require reporting of information in these categories on a monthly basis. This information would be due in our offices on a specified day (*e.g.,* the 15th day) following the end of each calendar month.

We might also require manufacturers of vehicles and equipment to report to us monthly if they learn of an incident in which it was alleged that the vehicle or equipment of the manufacturer caused or contributed to an injury that required the hospitalization of any person for more than observation.

Although the consequences may vary, it is also important for us to be aware promptly of failures of remedies that have been implemented to address safety-related defects and noncompliances, since the components or systems involved have already been determined to create a safety problem. Therefore, reports of such problems might also be required on a monthly basis.

3. *Quarterly.* Reporting other types of safety-related data might be on a quarterly basis. These data might include aggregate statistical data, warranty claims related to other components, and claims/lawsuits alleging fires. These reports would cover the calendar quarters of a year and be submitted by a specified day following the end of the reporting quarter (*i.e.,* a report for information received from January 1 through March 31 would be due sometime in April). This is the same schedule of reporting that we have established under 49 CFR 573.7 for the reporting of information about safety recalls.

B. *Upon NHTSA's request.* The TREAD Act requires all manufacturers to provide information and data relevant to early warning when NHTSA requests. Such a requirement complements NHTSA's pre-TREAD authorities to request safety-related information as part of our investigations.

C. *Questions to be answered.* We seek answers to the following questions relating to when information should be reported. In responding to each of the following questions, please provide specific recommendations, and the rationale for each recommendation.

1. Should reporting frequency vary depending on the type of information (*e.g.,* deaths, injuries, warranty rates, complaints, etc.)? If so, what is an appropriate frequency for each type?

2. Should reporting frequency vary depending on the type of vehicle or equipment (*e.g.,* passenger car, bus, child seats or other equipment)? If so, what is an appropriate frequency for each type?

3. Should reporting frequency vary depending upon the component or system involved (*e.g.,* air bag, child restraint, seat belt assemblies, brakes)? If so, what is an appropriate frequency for each?

4. Should manufacturers of particular equipment, such as off-vehicle and accessory equipment, be required to report data on a periodic basis, or only if they receive certain information such as claims alleging deaths or serious injuries involving their products?

VI. How Should Information Be Reported?

At the present time, we have limited knowledge about early warning information that manufacturers, particularly equipment manufacturers, receive, in what form it is received, and how, if at all, they route, code, maintain, and review the information. We believe that it is likely that the types of information to be reported under Section 30166(m)(3) are kept in a variety of manufacturer computer systems and formats. Some manufacturers probably use different computer systems for different types of information, and some may not be computerized at all. To be able to use this information efficiently, NHTSA will have to maintain it in computer systems that can read and incorporate the information into a standardized set of data fields, definitions, and codes. We seek comments on the best ways to assure that NHTSA can do this.

In our view, the early warning provisions contemplate that manufacturers must do more than merely provide raw information and data. Section 30166(m)(3) states that the information reportable to NHTSA is ''information which is received by the manufacturer derived from foreign and domestic sources.'' One meaning of ''derive'' is ''to reach or obtain by reasoning; deduce; infer'' (Random House Compact Unabridged Dictionary, Second Special Edition (1996), p. 536). The aspects of reasoning, deduction, and inference in the definition of ''derive,'' in our view, authorize a rule that requires a manufacturer to process, organize, and to some degree analyze the raw data and information it has, so that meaningful information is provided. Moreover, it is evident that we may specify the form in which information is reported in order to ensure that it can be efficiently used for its intended purpose of identifying defects related to motor vehicle safety.

NHTSA would expect manufacturers to provide collated and aggregated information by vehicle make, model, model year, and component system, broken down by failure or fault codes. Since it is absolutely essential that NHTSA be able to obtain information in a standardized form, we anticipate identifying relevant codes for reporting purposes.

A possible alternative on which we would appreciate comments would be to have each manufacturer of vehicles or equipment submit a spreadsheet in a specified format with the aggregate number of claims and other information (such as production volumes) by make, model, model year, and component (we would specify which components). The reports would be individually categorized according to the topics discussed above (e.g., injury claims, death claims, lawsuits, incidents). We would then be able to run a computer program to identify spikes or unusual trends in each of these categories.

To assure that manufacturers understand their reporting

responsibilities, we are considering developing a matrix of information with the reporting periods specified from left to right across the top (on bi-weekly, monthly, quarterly) and the type of information to be provided listed in a left-hand column from top to bottom. Thus, under ''Deaths,'' we would place ''X'' in the column whose heading reads ''On Receipt.'' We could develop a separate matrix for each type of manufacturer so that it would know exactly what to submit and when.

Questions to be answered. We seek answers to the following questions relating to the manner in which information should be reported.

1. How would manufacturers prefer to report information to us (e.g., hard copy, electronically)? If both, what would be in hard copy? What would be in electronic format? Which electronic format(s) would be preferable?

2. Should information regarding deaths and serious injuries be submitted in the form in which it is received by the manufacturer, the form in which it is entered into a database by the manufacturer, or in some other way?

The following five questions relate to the possible use of a spreadsheet for reporting aggregate information.

1. What do manufacturers understand the term ''aggregate statistical information'' to mean?

2. Is aggregate statistical information regarding claims, deaths and injuries likely to be useful in identifying potential safety-related defects? Would it be too general to be useful?

3. Would this type of aggregate statistical information tend to result in a large number of investigations into issues that are not related to potential safety-related defects?

4. Would the submission of supplemental information beyond the aggregate statistical information be necessary or appropriate to provide NHTSA with sufficient information upon which to decide to open an investigation? What types of such information?

5. If NHTSA needs to submit requests for supplemental information, should the requests be made as part of an investigation? If not, why not? If not, how should NHTSA characterize these requests, and should the requests and responses be made available to the public?

VII. How NHTSA Might Handle and Utilize Early Warning Information Reported To It

A. *Specifications for use of information.* Section 30166(m)(4)(A)(i) and (ii) require that our early warning rule specify how the information reported to us will be used. Those paragraphs provide:

> (A) [NHTSA's] specifications. In requiring the reporting of any information requested by [NHTSA] under this subsection, [NHTSA] shall specify in the final rule * * * (i) how [early warning] information will be reviewed and utilized to assist in the identification of defects related to motor vehicle safety; [and] (ii) the systems and processes [that NHTSA] will employ or establish to review and utilize such information.

These provisions relate to internal NHTSA matters and are not ordinarily required by the Administrative Procedure Act to be adopted pursuant to notice and comment. Nevertheless, we are seeking public comment on ways to improve our collection, review, and analysis of information and data with the new reporting tools which Congress has given us.

At this point, in the immediate aftermath of the enactment of the TREAD Act, we have only just begun to consider how we might best implement the early warning information and data received, but have formulated no procedures. In part, these procedures will depend upon the form of the rule as we will propose it later this year. They will also depend on the result of the ongoing study of the ''standards, criteria, procedures and methods'' used by NHTSA in determining whether to open a defect or noncompliance investigation that is being conducted pursuant to Section 15 of the TREAD Act. In the NPRM, we will specifically address the matters covered by subparagraphs (i) and (ii) above, and indicate how we propose to amend 49 CFR part 554, *Standards Enforcement and Defects Investigation* (one purpose of which is to inform the public of the procedures we follow in investigating possible safety-related defects).

Questions to be answered.

1. How should NHTSA review and utilize the information to be submitted under the early warning rule?

2. What system or processes should NHTSA utilize in reviewing this information?

B. *Information in possession of manufacturer.* Section 30166(m)(4)(B), Information in possession of manufacturer, states that our early warning regulations ''may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer.'' There is nothing in the legislative history that amplifies the statutory language. We interpret ''possession'' as meaning not only information in the actual possession of a manufacturer, but also constructive possession and ultimate control of information, such as information in foreign countries, or information possessed by outside counsel or consultants. We interpret Section 30166(m)(4)(B) as prohibiting us from imposing a requirement that a manufacturer collect data that it does not possess.

A colloquy on the floor of the House does not explain the provision but addressed the need to preserve relevant records:

> Mr. Markey: Concern has been expressed that this provision not become a loophole for unscrupulous manufacturers who might be willing to destroy a record in order to demonstrate that it is no longer in its possession. Would [Mr. Tauzin] agree that it is in [NHTSA's] discretion to require a manufacturer to maintain records that are in fact in the manufacturer's possession and that it would be a violation of such a requirement to destroy such a record?
>
> Mr. Tauzin: The gentleman is again correct.

We regard this as encouraging, if not mandating, us to amend our record keeping regulations in 49 CFR part 576 to assure that records covered by the early warning regulation are kept for an appropriate length of time. We note that part 576 currently applies only to vehicle manufacturers. Consistent with the above colloquy, we intend to expand its applicability to manufacturers of at least certain types of equipment.

Further, we intend to adopt a requirement to assure that manufacturers that are currently collecting information that would be reportable under the early warning requirements do not cease collecting it.

C. Disclosure. Section 30166(m)(4)(C), Disclosure, states that:

> None of the information collected pursuant to the final rule . . . shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.

We believe that section 30166(m)(4)(C) will have almost no impact. Historically, requests by the public for information that have submitted to us have been addressed under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Section 30167(b), Defect and noncompliance information, provides for disclosure of information related to a defect or noncompliance that we decide will assist us in carrying out Sections 30117(b), Maintaining purchaser records and procedures; Section 30118, Notification of defects and noncompliance; Section 30119, Notification procedures; Section 30120, Remedies for defects and noncompliance; and Section 30121, Provisional notification and civil

actions to enforce. Historically, NHTSA has not invoked Section 30167(b) in deciding to release information to the public.

In signing H.R. 5164 on November 1, 2000, the President stated that he was directing us ''to implement the information disclosure requirements of the [TREAD] Act in a manner that assures maximum public availability of information.'' As a practical matter, we do not interpret Section 30166(m)(4)(C) as affecting the current policies and practices applicable to the disclosure of information to the public.

The primary differences between pre-TREAD Act and post-TREAD Act reporting are likely to be in the mechanisms for reporting and amount of information reported. Before the TREAD Act, other than material submitted pursuant to 49 CFR 573.8, information in NHTSA's possession relating to a possible defect that was not the subject of an ongoing investigation was primarily in the form of consumer complaints. Under the TREAD Act, information will also be generated through periodic reports to NHTSA of information that a manufacturer might not otherwise have disclosed unless specifically asked by NHTSA to provide it. However, most of this information is likely to be similar to the types of information that NHTSA regularly obtained during its investigations pursuant to information requests or special orders.

The TREAD Act does not affect the right of a manufacturer to ask for a determination that information it may report to NHTSA is confidential.

D. *Burdensome requirements.*

Section 30166(m)(4)(D), Burdensome requirements, requires that the final rule:

> shall not impose requirements unduly burdensome to a manufacturer or a motor vehicle or motor vehicle equipment, taking into account the manufacturer's cost of complying with such requirements and [NHTSA's] ability to use the information sought in a meaningful manner to assist in the identification of defects related to motor vehicle safety.

On the basis of this ANPRM, manufacturers should have a general idea of the types of data and information that they may be required to submit under a final rule. This should allow them to make a tentative assessment of the burdens that compliance may entail and to provide comments.

Some burdens may be relatively infrequent, such as identifying and reviewing relevant warranty codes. Some burdens may be mostly one-time events, such as programming computer programs. Other burdens may be periodic, such as reporting warranty information, claims, deaths and serious injuries, and lawsuits.

In light of recent developments, some manufacturers may already be refining existing internal procedures, or developing new procedures, intended to provide them with an earlier warning of potential safety problems. To the extent that these procedures are being developed and implemented as part of a corporate policy and the procedures parallel those that are adopted in the final rule, the burden imposed by a final rule would appear to be lessened.

Questions To Be Answered

While we recognize that we have not proposed specific requirements, we would appreciate comments providing us with cost and burden estimates to the extent possible.

1. What are the estimated startup and ongoing costs (including financial as well as manpower costs) of complying with the early warning reporting requirements discussed in this notice? What is the basis for the estimate?

2. How should NHTSA decide whether particular requirements are ''unduly'' burdensome? Should we balance the burdens against the anticipated benefits of receiving the information in question? If so, how should we perform that balancing?

3. What is the most effective early warning information and least burdensome ways of providing it?

4. Have manufacturers developed or are manufacturers beginning to develop and implement their own early warning reporting procedures in advance of NHTSA's rulemaking? If so, what are these procedures. How do these procedures differ from those discussed in the ANPRM? How are they similar?

VIII. Periodic Review

Under section 30166(m)(5), NHTSA must specify in the final rule ''procedures for the periodic review and update of such rule.'' Once a final rule amending Part 573 is developed and issued, we anticipate that experience will indicate areas where the regulation ought to be amended, to add or delete information required, and to modify our information-gathering procedures. We would then implement rulemaking to make these adjustments. Accordingly, we plan to amend Part 554 to state that we will review our defect information-gathering procedures at least once every four years. It is likely that the initial review will be sooner than that period.

IX. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures; Unfunded Mandates Reform Act of 1995. This advance notice was not reviewed under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. Due to the preliminary nature of this document, NHTSA has identified few specific changes that it might propose to its regulations. Further, it has limited current cost information that might be relevant to any potential changes. Accordingly, NHTSA is unable now to evaluate the economic impacts that this rulemaking might ultimately have. At this time, it does not appear that the rule resulting from this rulemaking will be significant. However, NHTSA will reassess this rulemaking in relation to the Executive Order, the DOT Regulatory Policies and Procedures, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) and other requirements for analyzing rulemaking impacts after using the information received in response to this advance notice to select specific proposed changes. To that end, the agency solicits comments, information, and data useful in assessing the impacts of making changes as specified in Section 3(b) of the TREAD Act as discussed in this document.

Regulatory Flexibility Act. NHTSA has considered the impact of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*). Most manufacturers of motor vehicles and motor vehicle equipment are not small entities. We have asked manufacturers of motor vehicles and motor vehicle equipment to specifically comment on the burdens that might be imposed upon them by compliance with Section 3(b) of the TREAD Act. The final rule will not impose new substantive requirements, but will require new reporting. However, the requirements have not been delineated. Accordingly, no regulatory flexibility analysis has been prepared at this time.

Executive Order 13132 (Federalism). Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The E.O. defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' A final rule based upon this ANPRM, would regulate the manufacturers of motor vehicles and motor vehicle equipment,

would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132.

Civil Justice Reform. A rule based on this ANPRM would not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

The final rule will require manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically and upon request. We may also adopt a standardized form for reporting this information, so as to ensure consistency of responses. These provisions are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1329. Accordingly, if requirements are proposed, they will be submitted to OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**.

How Can I be Sure That my Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA (NCC–30), at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR Part 512.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. Because we must issue a final rule not later than June 30, 2002, and a proposed rule in the interim, we are unlikely to extend the comment closing dates for this notice or for the proposed rule. However, in accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the internet. To read the comments on the internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on ''search.''

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were ''NHTSA–2001–1234,'' you would type ''1234.''

(4) After typing the docket number, click on ''search.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. The comments are imaged documents, in either TIFF or pdf format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Authority: Sec. 3(b), Pub. L. 106–414; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 12, 2001.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 01–1502 Filed 1–12–01; 3:48 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 010103003-1003-01, I.D. 083000B]

RIN 0648-AN92

List of Fisheries for 2001

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes changes for 2001 to the List of Fisheries (LOF) as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2001 reflects new information on interactions between commercial fisheries and marine mammals. Under the MMPA, NMFS must place a commercial fishery on the LOF into one of three categories based upon the level of serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by March 8, 2001.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this proposed rule should be sent to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

Registration information and materials and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, Attn: Sandra Arvilla.

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin.

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Don Peterson.

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office.

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Emily Hanson, Office of Protected Resources, 301-713-2322 ext. 101; Kim Thounhurst, Northeast Region, 978-281-9138; Diane Borggaard, Southeast Region, 727-570-5312; Tim Price, Southwest Region, 562-980-4029; Brent Norberg, Northwest Region, 206-526-6733; Michael Payne, Alaska Region, 907-586-7642. Individuals who use a telecommunications device for the deaf may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What Is the List of Fisheries?

Under section 118 of the MMPA, NMFS must publish, at least annually, an LOF that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

How Does NMFS Determine In Which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR part 229). In addition, these definitions are summarized in the preambles to the final rule implementing section 118 (60 FR 45086, August 30, 1995), the final LOF for 1996 (60 FR 67063, December 28, 1995), and the proposed LOF for 1999 (63 FR 42803, August 11, 1998). These criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the Potential Biological Removal (PBR) level for each marine mammal stock. The PBR level is defined in 50 CFR 229.2 to mean the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of this stock, all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier of analysis to determine their classification.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

Tier 1, therefore, considers the cumulative fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for a particular stock. Additional details regarding how threshold percentages between the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This proposed rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 2 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 3 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

How Do I Register?

Owners of vessels or gear engaging in a Category I or II fishery, are required under 50 CFR 229.4 to obtain a marine mammal authorization. You must register through a NMFS Regional Offices (see **ADDRESSES**) unless you participate in a fishery that has an integrated registration program. Upon receipt of a completed registration, NMFS will issue vessel or gear owners a decal to display on their vessels and an authorization certificate that must be in the possession of the operator while fishing. The procedures and fees associated with registration differ between Regions.

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to pay the $25 registration fee.

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA: All Alaska Category II fisheries; all Washington and Oregon Category II fisheries; and three Atlantic fisheries (the Gulf of Maine, U.S. mid-Atlantic lobster fishery, the Atlantic squid, mackerel, butterfish trawl fishery, and the Northeast sink gillnet fishery). Special procedures and instructions for registration in these integrated fisheries are described in the preamble to the final LOF for 1998 (63 FR 5748, February 4, 1998).

How Do I Renew My Registration Under the MMPA?

The Regional Offices annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is your responsibility to ensure that registration or renewal forms are submitted to NMFS at least 30 days in advance of fishing. If you have not received a renewal packet by January 1, or are registering for the first time, request a registration form from the appropriate Regional Office (see **ADDRESSES**).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

Any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must comply with 50 CFR 229.6 and report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer onboard your vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans. NMFS may develop and implement take reduction plans for any Category I or II fishery that interacts with a strategic stock.

Sources of Information Reviewed for the Proposed 2001 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether proposed changes in fishery classification were warranted. NMFS also reviewed other sources of new information, including marine mammal strandings data, observer program data, fisher self-reports, and other information that is not included in the SARs.

NMFS' SARs provide the best available information on both the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels for marine mammal stocks. The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific coast (including Hawaii), and the Atlantic coast (including the Gulf of Mexico). The SRGs were created by the MMPA to review the science that goes into the stock assessment reports and advise NMFS on population status and trends, uncertainties in the science, research needs, and other issues.

The proposed LOF for 2001 is based on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 1999 (65 FR 12514, March 9, 2000), and the draft SARs for 2000 (65 FR 31520, May 18, 2000). The final SARs for 1999 and draft SARs for 2000 provide new estimates of total serious injury and mortality of marine mammals that occur incidental to some U.S. commercial fisheries and provide new estimates of PBR levels for some marine mammal stocks. If information in the 2000 draft SARs changes as a result of public comments or additional review by the Scientific Review Groups, these updates will be incorporated in the final LOF for 2001.

Changes Resulting From New Draft SARs

Tables 2 and 3 list all U.S. commercial fisheries, the number of participants in each fishery, and the marine mammal stocks and/or species incidentally killed or injured in each fishery. Information in Table 2 was updated to include the following changes in the final 1999 Atlantic and Gulf of Mexico SARs and draft 2000 Atlantic and Gulf of Mexico SARs:

1. The Northern Gulf of Mexico stock of dwarf sperm whales was designated as non-strategic.

2. The Northern Gulf of Mexico stock of pygmy sperm whales was designated as non-strategic.

3. The Western North Atlantic stock of Atlantic spotted dolphin was designated as non-strategic.

4. The Western North Atlantic stock of pantropical spotted dolphin was designated as non-strategic.

5. The Western North Atlantic stock of dwarf sperm whales was designated as non-strategic.

6. The Western North Atlantic stock of long-finned pilot whales is proposed to be designated as strategic.

The 1999 final Pacific SARs included updates to include new information on fishery mortality, fisher self-reporting, and stranding data through 1997, resulting in revisions to 11 stocks, but no changes to the status of any Pacific stocks. The draft 2000 Pacific SARs included a complete set of revised stock assessments for Pacific marine mammal stocks under NMFS jurisdiction, including the following changes in status:

1. The California/Oregon/Washington stock of short-finned pilot whales is proposed to be designated as non-strategic;

2. The Central California stock of harbor porpoise is proposed to be designated as strategic; and

3. The Hawaii stock of false killer whales is proposed to be designated as strategic.

The final 1999 Alaska SARs and draft 2000 Alaska SARs provided updates to the number of participants in each Alaska commercial fishery, and to the list of species and/or stocks incidentally injured or killed in each fishery. When possible, the number of participants in Alaska fisheries provided in Table 3 in the LOF reflects the number of permits fished in 1999. For those fisheries for which this information was not available, the number of permits issued in 1999 or the number of permits fished or issued in prior years were used to represent the number of participants. The new information did not change the status of any of the Alaska stocks.

Proposed Changes to the 2001 LOF

NMFS is proposing specific changes to the LOF that would take effect in 2001. With the exception of the proposed changes, NMFS will retain the fishery classifications as published in the final LOF for 1999 (64 FR 9067, February 24, 1999), and which continued to be effective in 2000 (65 FR 24448, April 26, 2000). NMFS solicits comments on the proposed changes and should be advised of any fishery that is not included in the LOF. As a result of comments or information received after the publication of the proposed 2001 LOF, NMFS may redefine existing fishery definitions, recategorize fisheries, or add and delete fisheries from this list for the final 2001 LOF.

This proposed LOF addresses commercial fisheries only, but NMFS is currently working with the Atlantic States Marine Fisheries Commission and states, partly at the request of the Mid-Atlantic Harbor Porpoise Take Reduction Team, to look for ways to quantify and address recreational fisheries and marine mammal interactions. NMFS solicits comments on distinguishing between the commercial and recreational fishing sectors when analyzing marine mammal strandings that display evidence of fishery interactions.

Table 1 has been added to the LOF to provide a summary of fisheries for which changes are proposed and to identify the type of change. The first column identifies the fishery as listed in the existing List of Fisheries, the middle column shows the proposed change, and the third column lists how the fishery is listed in the proposed 2001 LOF. The category of each fishery is indicated in parenthesis. A more

detailed discussion of the change made to each fishery follows in the text, organized by the type of change. Updates to the number of participants and to the marine mammal species and stocks incidentally injured and killed are not included in this table. Changes not reflected in Table 1 were either made directly to Tables 2 or 3 or are discussed in the ''Other Proposed Changes or Clarifications to the LOF'' section.

TABLE 1—SUMMARY OF CHANGES PROPOSED FOR THE 2001 LIST OF FISHERIES

Fishery Listing in the 2000 List of Fisheries	Proposed Change	Fishery Listing in Proposed 2001 List of Fisheries
Commercial Fisheries in the Pacific Ocean		
AK Clam Hand Shovel (III)	Reorganized	AK Clam (III); AK Clam Mechanical/ Hydraulic (III)
AK Octopus/Squid ''Other'' (III)	Renamed	AK Squid/Pot (III)
AK Southeast Alaska Herring Food/Bait Pound Net (III)	Renamed	AK Southeast Herring Roe/Food/Bait Pound Net (III)
AK Southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska Sablefish Longline/Set Line (federally regulated Waters) (III); AK State Waters Sablefish Longline/Set Line (III); AK Miscellaneous Finfish/Groundfish Longline/Set Line (III).	Reorganized	AK Bering Sea, Aleutian Islands Groundfish Longline/ Set Line (federally Regulated Waters, including miscellaneous finfish and sablefish) (III); AK Gulf of Alaska Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish) (III); AK State-Managed Waters, Groundfish Longline/Set Line (including sablefish, rockfish, and miscellaneous finfish) (III)
Southeast AK Salmon Drift Gillnet (II)	Renamed	AK Southeast Salmon Drift Gillnet (II)
Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line (III).	Recategorized	Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line (II)
N/A	Added	AK Herring Spawn on Kelp Pound Net (III)
N/A	Added	AK Snail Pot (III)
N/A	Added	California Longline (II)
Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean		
Atlantic Ocean, Gulf of Mexico Blue Crab Trap/Pot (III)	Reorganized and Recategorized	Atlantic Blue Crab Trap/Pot (II); Gulf of Mexico Blue Crab Trap/Pot (II); Northeast Trap/Pot (II)
Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Drift Gillnet (I).	Removed	N/A
Atlantic Squid, Mackerel, Butterfish Trawl (II)	Recategorized	Atlantic Squid, Mackerel, Butterfish Trawl (I)
Bluefish, Croaker, Flounder Trawl Fishery (III)	Reorganized	Mid-Atlantic Mixed Species Trawl Fishery (III)
Gulf of Maine Small Pelagics Surface Gillnet (II)	Renamed	Northeast Anchored Pelagic Gillnet (II)
Gulf of Maine, Southeast U.S. Atlantic Coastal Shad, Sturgeon Gillnet (III)	Reorganized and Recategorized	Southeast Atlantic Gillnet (II); Northeast Sink Gillnet (I); Northeast Anchored Pelagic Gillnet (II); Northeast Drift Gillnet (II)
Gulf of Maine/U.S. Mid-Atlantic Lobster Trap/Pot (I)	Renamed	Northeast/Mid-Atlantic American Lobster Trap/Pot (I)
Gulf of Maine, U.S. Mid-Atlantic Mixed Species Trap/Pot (III)	Reorganized and Recategorized	Northeast Trap/Pot (II); Mid-Atlantic Mixed Species Trap/Pot (III)
Gulf of Mexico Inshore Gillnet (III) Gulf of Mexico Coastal Gillnet (III); Gulf of Mexico King and Spanish Mackerel Gillnet (III).	Reorganized and Recategorized	Gulf of Mexico Gillnet (II)
Mid-Atlantic Coastal Gillnet (II)	Recategorized	Mid-Atlantic Coastal Gillnet (I)
Mid-Atlantic Haul Seine (II)	Reorganized and Renamed	North Carolina Long Haul Seine (II); Mid-Atlantic Haul/ Beach Seine (II)
U.S. Mid-Atlantic Mixed Species Stop/Seine/Weir (III)	Renamed	U.S. Mid-Atlantic Mixed Species Stop Seine/Weir (except the North Carolina Roe Mullet Stop Net) (III)
Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl (III).	Renamed	Southeastern U.S. Atlantic, Gulf of Mexico Shrimp/ Trawl Fishery (III)
North Carolina Inshore Gillnet (III)	Recategorized	North Carolina Inshore Gillnet (II)
Southeastern U.S. Atlantic, Caribbean Haul Seine (III); Caribbean Beach Seine (III).	Reorganized and Renamed	Southeastern U.S. Atlantic Haul/Beach Seine (III); Caribbean Haul/Beach Seine (III)
All Southeastern Atlantic Gillnet Fisheries (except for Category II Shark Gillnet); Florida East Coast King and Spanish Mackerel Gillnet (III).	Reorganized and Recategorized	Southeast Atlantic Gillnet (II)
Southeastern U.S. Atlantic, Gulf of Mexico Snapper-Grouper and Other Reef Fish Bottom Longline/Hook-and-Line(III).	Renamed	Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean Snapper-Grouper and Other Reef Fish Bottom Longline/Hook-and-Line(III)
Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean Spiny Lobster Trap/Pot(III).	Reorganized	Florida Spiny Lobster Trap/Pot (III); Caribbean Spiny Lobster Trap/Pot(III)
N/A	Added	Caribbean Gillnet (III)
N/A	Added	Caribbean Mixed Species Trap/Pot (III)
N/A	Added	Gulf of Mexico Haul/Beach Seine (III)
N/A	Added	Gulf of Mexico Mixed Species Trap/Pot (III)
N/A	Added	Gulf of Mexico Mixed Species Trawl (III)
.....	Added	Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean Cast Net (III)
N/A	Added	Mid-Atlantic Pound Net (II)
N/A	Added	North Carolina Long Haul Seine (II)
N/A	Added	Northeast Drift Gillnet (II)
N/A	Added	Northeast Trap/Pot (II)

TABLE 1—SUMMARY OF CHANGES PROPOSED FOR THE 2001 LIST OF FISHERIES—Continued

Fishery Listing in the 2000 List of Fisheries	Proposed Change	Fishery Listing in Proposed 2001 List of Fisheries
N/A	Added	Southeastern U.S. Atlantic, Gulf of Mexico Golden Crab Trap/Pot (III)
N/A	Added	Southeastern U.S. Atlantic, Gulf of Mexico Stone Crab Trap/Pot (III)

Fisheries Elevated to Category I

Atlantic Squid, Mackerel, Butterfish Trawl Fishery

NMFS proposes to elevate the Atlantic Squid, Mackerel, Butterfish Trawl Fishery to Category I as justified by the following tier analysis. Marine mammal species and stocks incidentally injured and killed by the Atlantic Squid, Mackerel, Butterfish Fishery during the 1996-1998 period include: common dolphin (WNA stock), white-sided dolphin (WNA stock), and *Globicephala, sp.* (includes long-finned and/or short-finned pilot whales)(WNA stock).

Tier 1 Evaluation: The NMFS Sea Sampling program recorded takes of pilot whales (WNA stock), Atlantic white-sided dolphins (WNA stock), and common dolphins (WNA stock) between 1996-1998. According to data presented in the draft 2000 SAR, annual serious injury and mortality across all fisheries for the pilot whale, white-sided dolphin, and common dolphin stocks exceeds 10 percent of the PBR level (78, 184, and 107, respectively). Therefore, this fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Bycatch analysis for this fishery during the 1996-1998 period is reported in the draft 2000 SAR. The analysis resulted in an estimated average mortality rate for this fishery of 43 pilot whales and 367 common dolphins per year, which is greater than 50 percent of the PBR level for both stocks. Therefore, this fishery is proposed to be elevated to Category I.

Mid-Atlantic Coastal Gillnet Fishery

NMFS proposes to elevate the Mid-Atlantic Coastal Gillnet fishery to Category I based on new observer bycatch information about bottlenose dolphins (WNA coastal stock) presented in the draft 2000 SAR. The geographic boundaries of the Mid-Atlantic Coastal Gillnet Fishery would be maintained. This fishery includes all gillnet fishing that is south of Long Island, landward of the 72°30' W. line, and north of a line extending due east from the North Carolina/South Carolina border. However, the Mid-Atlantic Coastal Gillnet Fishery would not include the Category III inshore gillnet fisheries, which are not changed on the LOF.

Marine mammal species and stocks incidentally injured and killed in the Mid-Atlantic Coastal Gillnet Fishery include: bottlenose dolphin (WNA coastal stock), harbor porpoise (Gulf of Maine/Bay of Fundy stock), harbor seal (WNA stock), harp seal (WNA stock), humpback whale (undetermined North Atlantic stock), minke whale, (WNA stock), *Globicephala, sp.* (includes long-finned and/or short-finned pilot whales) (WNA stock), white-sided dolphin (WNA stock), and common dolphin (WNA stock).

The tier analysis justifying this change follows:

Tier 1 Evaluation: The NMFS Sea Sampling program has documented takes of coastal bottlenose dolphins in the Mid-Atlantic Coastal Gillnet Fishery. Incidental mortality and serious injury of bottlenose dolphin (WNA coastal stock) across all fisheries exceeds 10 percent of the PBR level (25). Therefore, this fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: The draft 2000 SAR reports that the total annual estimated average fishery-related mortality or serious injury to bottlenose dolphin (WNA coastal stock) by mid-Atlantic coastal gillnets during 1994-1998 was 45.8 bottlenose dolphins, which is greater than 50 percent of the PBR level (25) for this stock. Therefore, NMFS proposes to elevate this fishery to Category I.

Fisheries Elevated to Category II

Atlantic Blue Crab Trap/Pot Fishery

NMFS proposes to rename the Atlantic portion of the Category III Atlantic Ocean, Gulf of Mexico Blue Crab Trap/Pot Fishery the Atlantic Blue Crab Trap/Pot Fishery and elevate the fishery to Category II based on a review of fishery interaction data from bottlenose dolphin strandings in the southeastern Atlantic. The geographic range of this fishery would extend from 72°30' W. longitude south from Long Island to Florida's Atlantic coast. The blue crab is distributed along the entire East Coast. However, data suggest that significant fishing effort does not occur north of 72°30' W. longitude. This northern boundary would also encompass most of the distribution of coastal bottlenose dolphins along the East Coast. Any blue crab pot effort north of 72°30' W. longitude would be included in the Northeast Trap/Pot Fishery.

The marine mammal species and stocks incidentally injured and killed include the bottlenose dolphin (WNA coastal stock) and West Indian manatee (FL stock). NMFS is presently evaluating this fishery to determine the number of participants, although historic numbers indicate that there may be at least 16,000 participants in this fishery. NMFS will also consider registration options for this fishery that will minimize the registration burden on fishers. The tier analysis justifying this change follows:

Tier 1 Evaluation: Incidental mortality and serious injury of bottlenose dolphins (WNA coastal stock) across all fisheries is greater than 10 percent of the PBR level (25), therefore this fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Between 1994 and 1998, 22 bottlenose dolphin carcasses (4.4 dolphins per year on average) recovered by the Stranding Network between North Carolina and Florida's Atlantic coast displayed evidence of possible interaction with a trap/pot fishery (i.e., rope and/or pots attached, or rope marks). Additionally, although not included in the analysis, at least two dolphins were reported to be released alive (condition unknown) from blue crab traps/pots during this time period.

Given that other sources of annual serious injury and mortality estimates (e.g., observer data) related to the Atlantic Blue Crab Trap/Pot Fishery are unavailable, the stranding data (4.4 bottlenose dolphins per year) were used as a minimum estimate of annual serious injury and mortality. Therefore, bottlenose dolphin (WNA coastal stock) mortality and serious injury from the Atlantic Blue Crab Trap/Pot Fishery is estimated to be between 1 percent and 50 percent of the PBR level (25), warranting placement of this fishery in Category II.

Gulf of Mexico Blue Crab Trap/Pot Fishery

NMFS proposes to rename the Gulf of Mexico portion of the Category III Atlantic Ocean, Gulf of Mexico Blue

Crab Trap/Pot Fishery to the Gulf of Mexico Blue Crab Trap/Pot Fishery and elevate this fishery to Category II based on a review of fishery interaction data from bottlenose dolphin strandings in the Gulf of Mexico. The marine mammal species and stocks incidentally injured and killed include the bottlenose dolphin (Western, Eastern, and Northern Gulf of Mexico stocks and Gulf of Mexico Bay, Sound, and Estuarine stock), and West Indian manatee (FL stock). There are approximately 4,113 commercial blue crab fishers in the Gulf of Mexico. NMFS will consider registration options for this fishery that will minimize the registration burden on fishers. The tier analysis justifying this change follows:

Tier 1 Evaluation: As noted in the tier analysis for the Gulf of Mexico gillnet fishery, total annual mortality and serious injury of bottlenose dolphin (Gulf of Mexico Bay, Sound, and Estuarine stock) exceeds 10 percent of the PBR level (39.7), and, therefore, the Gulf of Mexico Blue Crab Trap/Pot Fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Between 1994 and 1998, seven bottlenose dolphin carcasses (1.4 dolphins per year on average) recovered by the Gulf of Mexico stranding network displayed evidence of possible interaction with a trap/pot fishery (i.e., rope and/or pots attached, or rope marks). Additionally, although not included in the analysis, at least 1 dolphin was reported to be released alive (condition unknown) from a blue crab trap/pot in the Gulf of Mexico during this time period.

Because the Gulf of Mexico Blue Trap/Pot Fishery occurs predominantly in inshore waters, NMFS combined the PBR of the tentative Gulf of Mexico Bay, Sound and Estuarine stocks from Florida's Gulf coast to the Mississippi River mouth (39.5).

Given that other sources of annual serious injury and mortality estimates (e.g., observer data) related to the Gulf of Mexico Blue Crab Trap/Pot Fishery are unavailable, the stranding data (0.8 bottlenose dolphins per year) were used as a minimum estimate of annual serious injury and mortality. Therefore, bottlenose dolphin mortality and serious injury from the Gulf of Mexico Blue Trap/Pot Fishery is estimated to be between 1 percent and 50 percent of the PBR level (39.7) for bottlenose dolphins (Gulf of Mexico Bay, Sound, and Estuarine stock), placing this fishery in Category II.

Gulf of Mexico Gillnet Fishery

NMFS proposes to combine the Gulf of Mexico Inshore Gillnet Fishery, the Gulf of Mexico Coastal Gillnet Fishery, and the Gulf of Mexico King and Spanish Mackerel Gillnet Fishery into a new Gulf of Mexico Gillnet Fishery. The COLREGS line[1] is presently used to divide the Gulf of Mexico Inshore Gillnet Fisheries (i.e., fisheries occurring in bays, sounds, or estuaries) from the Gulf of Mexico Coastal Gillnet Fisheries, but NMFS has learned that similar gillnet fisheries occur both inside and outside of the COLREGS line. Therefore, NMFS proposes to combine these fisheries in the LOF for clarity. The Gulf of Mexico Gillnet Fishery has 734 participants.

Based on analogy with other gillnet fisheries, the Atlantic Scientific Review Group (ASRG) recommendation that NMFS elevate all gillnet fisheries to at least Category II (unless evidence to the contrary is available), a NOAA memo indicating that stranding data substantially underestimate human related mortality levels (August 6, 1999, NOAA Memo from R. Merrick and S. Swartz to D. Wieting), and the actual stranding data presented in the following tier analysis, NMFS is proposing to elevate the Gulf of Mexico Gillnet Fisheries to Category II. The species and stocks incidentally injured and killed include bottlenose dolphin (Gulf of Mexico Western, Northern, and Eastern Coastal Stocks and the Gulf of Mexico Bay, Sound and Estuarine Stock).

Tier 1 Evaluation: The Gulf of Mexico Menhaden Purse Seine Fishery, a Category II fishery, has documented interactions with coastal stocks of bottlenose dolphin, which exceed 10 percent of the combined PBR level (154) for the Western, Northern and Eastern coastal bottlenose dolphin stocks. Therefore the Gulf of Mexico Coastal Gillnet Fishery is subject to Tier 2 analysis.

For the Gulf of Mexico Bay, Sound and Estuarine Stock of bottlenose dolphin (which was not affected by the menhaden purse seine fishery and thus not part of the previous tier analysis), the total annual mortality and serious injury exceeds 10 percent of the PBR level (39.7). Therefore, the Gulf of Mexico Inshore Gillnet Fishery is also subject to Tier 2 analysis and data on this fishery will be combined with the coastal gillnet fishery for the Tier 2 analysis on the Gulf of Mexico gillnet fishery.

Tier 2 Evaluation: Between 1994 and 1998, the stranding network in the Gulf of Mexico recovered 35 bottlenose dolphins that died as a result of fishery interactions. Of these, up to 10 carcasses showed evidence of gillnet interactions (i.e., attached gillnet and net marks): one in the eastern Gulf of Mexico, eight in the northern Gulf of Mexico, and one in the western Gulf of Mexico, for an average of two bottlenose dolphin mortalities recovered by the U.S. stranding network per year with evidence of gillnet interactions.

Conclusive stock structure information on bottlenose dolphins in the Gulf of Mexico is not yet available, so currently NMFS is generally unable to identify from which stock stranded bottlenose dolphin originate. To take this uncertainty into consideration, NMFS combined the PBR levels across the Gulf of Mexico Western (29), Northern (35), and Eastern (90) coastal stocks (total PBR level of 154) and the Gulf of Mexico Bay, Sound and Estuarine stock (39.7) for a total PBR level in the Gulf of Mexico of 193.7.

Given that the Gulf of Mexico Gillnet Fisheries have not been observed to date, the stranding data (two bottlenose dolphins per year) were used as a minimum estimate of annual serious injury and mortality. Therefore, bottlenose dolphin mortality and serious injury from these fisheries is estimated to be between 1 percent and 50 percent of the PBR level (193.7), placing this fishery in Category II. As noted in the August 6, 1999, NOAA Memo from R. Merrick and S. Swartz to D. Wieting, it is believed that true mortality rates are higher than what stranding data indicate.

Preliminary breakdown by area and stock for bottlenose dolphin found in bays, sounds, and estuaries (i.e., inside the COLREGS line) supports a Category II classification for at least one of the areas/stocks. For example, in the Bay Boudreau and Mississippi Sound (Block B02-05, 29, 31), one dead dolphin was recovered by the southeast U.S. stranding network on average per year with evidence of a gillnet interaction. Annual serious injury and mortality related to the inshore gillnet fishery for this stock is between 1 percent and 50 percent of the PBR level (13).

Most stranded animals used in the analyses with evidence of gillnet interactions occurred in the northern Gulf of Mexico. Net bans in state waters off of Florida and Texas may explain why most stranded animals with evidence of a gillnet interaction

[1] As defined in 33 CFR part 80, COLREGS demarcation lines delineate those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those water upon which mariners shall comply with the Inland Navigation Rules. The waters inside of the lines are Inland Rules waters. The waters outside the lines are COLREGS waters. COLREGS demarcation lines are depicted or noted on nautical charts published by NOAA (Coast Charts 1:80,000 scale) and described in 33 CFR part 80.

occurred in the northern Gulf of Mexico. Gillnet fisheries may occur in Federal waters off of Florida and Texas, but resulting marine mammal mortalities may occur too far offshore to be reflected in the beach strandings.

Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery

NMFS proposes to elevate the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery (Hawaii longline fishery) to Category II because of the diversity of marine mammal species that have been documented to interact with the fishery, including false killer whales (Hawaiian stock), Risso's dolphin (Hawaiian stock), bottlenose dolphin (Hawaiian stock), spinner dolphin (Hawaiian stock), and short-finned pilot whales (Hawaiian stock). The draft 2000 Pacific SARs present data about these stocks of marine mammals and calculate a rate of interaction between the Hawaii longline fishery and each stock based on observer data. However, the abundance estimate and PBR for each stock is based on twelve aerial surveys conducted within approximately 25 nautical miles of the main Hawaiian Islands in 1993, 1995, and 1998, and therefore underestimates the abundance and PBR for each stock within the U.S. Exclusive Economic Zone (EEZ) off of Hawaii. NMFS also has records of an interaction between the Hawaii longline fishery and a sperm whale (Hawaiian stock) in 1999 and a humpback whale (Central North Pacific stock) in 1991. Regardless of the limitations of the abundance estimates and PBRs, observer data show that the Hawaii longline fishery has occasional interactions with marine mammals and should therefore be elevated to Category II. In addition, the recategorization of this fishery from Category III to Category II is consistent with the way NMFS has addressed other U.S. pelagic longline fisheries, all of which are Category I or II.

North Carolina Inshore Gillnet Fishery

NMFS proposes to elevate the North Carolina Inshore Gillnet Fishery to Category II. A Geographic Information System (GIS) analysis was performed on fisheries interaction data from bottlenose dolphin strandings in North Carolina to confirm locations as inside (inshore) or outside (coastal) of the COLREGS line currently used to distinguish between North Carolina's inshore and coastal gillnet fisheries. The analysis revealed 12 fishery interaction-related strandings in inshore waters. The tier analysis justifying the elevation follows:

Tier 1 Evaluation: Incidental mortality and serious injury across all fisheries for bottlenose dolphins (WNA coastal stock) is greater than 10 percent of the PBR level (25). This fishery is thus subject to Tier 2 analysis.

Tier 2 Evaluation: Between 1993 and 1997, 12 bottlenose dolphins that died as a result of fishery interactions were recovered from inshore waters in North Carolina. Of these, eight carcasses bore evidence of possible gillnet interaction. Of the carcasses stranding inshore and displaying evidence of gillnet interactions, two were clearly attributable to gillnet interactions (i.e., visible monofilament net marks and/or gear present on the carcass). Counting only these latter two animals, there were 0.4 dead bottlenose dolphins with clear evidence of gillnet interactions recovered from inshore waters by the southeast U.S. stranding network on average per year. Additionally, although not included in the analysis, a live dolphin entangled in a gillnet in inshore waters was disentangled and released in September of 1997.

Given that an annual serious injury and mortality estimate related to the North Carolina Inshore Gillnet Fishery has not been calculated to date, the stranding data (0.4 bottlenose dolphins per year) was used as a minimum estimate of annual serious injury and mortality. Therefore, bottlenose dolphin (WNA coastal stock) mortality and serious injury from the North Carolina Inshore Gillnet Fishery is estimated to be between 1 percent and 50 percent of the PBR level (25), placing this fishery in Category II.

Other inshore gillnet fisheries in the Mid-Atlantic will be re-evaluated in a future LOF cycle for consistency with the changes proposed this year.

Southeast Atlantic Gillnet Fishery

NMFS proposes to include all southeast Atlantic gillnet fisheries (excluding the separate Category II Southeastern U.S. Atlantic Shark Gillnet Fishery) into one gillnet fishery complex named the Southeast Atlantic Gillnet Fishery for two reasons: (1) New information indicates a more extensive use of stab nets (i.e., sink gillnets) in the fishery for coastal migratory pelagics than was previously known, and (2) the Florida net ban has resulted in the redistribution of effort from state gillnet fisheries (e.g., for pompano, spot, croaker) into Federal waters. The Florida East Coast Pelagics King and Spanish Mackerel Gillnet Fisheries are included in this proposed new fishery. Gillnet fishing for shad in the southeast would also be included in this proposed fishery (see proposal for Gulf of Maine, Southeast U.S. Atlantic Coastal Shad, Sturgeon Gillnet Fishery). There are approximately 640 participants in this fishery: 279 participants gillnetting for various target species in the southeast Atlantic, and 361 participants from the Southeast shad component of the Gulf of Mexico, Southeast, U.S. Atlantic Coastal Shad, Sturgeon Gillnet Fishery. This number includes recreational fishermen who have a South Carolina commercial shad license. Presently, it is not possible to determine the number of recreational versus commercial fishers who have a commercial shad license. NMFS will revise the number of participants to exclude recreational fishermen in a future LOF cycle if the information necessary to do this becomes available.

Based on analogy with other gillnet fisheries, the ASRG recommendation that NMFS elevate all gillnet fisheries to at least Category II (unless evidence to the contrary is available), and a review of stranding records from 1994-1998, NMFS proposes to place this fishery in Category II. The marine mammal species and stock incidentally injured and killed is bottlenose dolphin (WNA coastal stock). The tier analysis justifying this change follows:

Tier 1 Evaluation: Incidental mortality and serious injury across all fisheries for bottlenose dolphin (WNA coastal stock) is greater than 10 percent of the PBR level (25). This fishery is thus subject to Tier 2 analysis.

Tier 2 Evaluation: Between 1994 and 1998, 44 bottlenose dolphins that died as a result of fishery interactions were recovered by stranding network members in South Carolina, Georgia, and the Atlantic coast of Florida. Of these, five carcasses (1 dolphin per year on average) bore evidence of a possible gillnet interaction (attached gillnet and net marks).

Given that an annual serious injury and mortality estimate related to the Southeast Atlantic Gillnet Fishery has not been calculated to date, the stranding data (one bottlenose dolphin per year) was used as a minimum estimate of annual serious injury and mortality. Therefore, bottlenose dolphin (WNA coastal stock) mortality and serious injury from the Southeast Atlantic Gillnet Fishery is estimated to be between 1 percent and 50 percent of the PBR level (25), placing this fishery in Category II. Fisheries Added to the LOF

Alaska Herring Spawn On Kelp Pound Net Fishery

NMFS proposes to add the Alaska Herring Spawn on Kelp Pound Net Fishery to the LOF as a Category III

fishery. This fishery would include fisheries of Southeast Alaska and Prince William Sound. These fisheries were previously on the LOF as Category III fisheries, but they had become inactive and were removed in 1993. These fisheries have become active again.

Alaska Snail Pot Fishery

NMFS proposes to add the AK Snail Pot Fishery to the LOF as a Category III fishery. This small fishery targets three species of sea snails in the Bering Sea (typically north and west of the Pribilof Islands), using extremely small pots (less than 18 inches (45.7 cm) across). This is an extremely temporary and opportunistic fishery, typically occurring after the opilio crab fishery. Activity in the fishery is completely market driven, and while there were four permits fished in 1997, in 1998 there were no landings. According to Alaska Department of Fish and Game, it would not be impossible, but extremely unlikely for a marine mammal to get entangled in this gear. The fishery was observed for crab bycatch, and subsequently has been exempted from observer coverage since none was found. All other pot fisheries in AK are currently Category III fisheries.

California Longline Fishery

NMFS proposes to add the California Longline Fishery to the LOF as a Category II fishery. This fishery is directed primarily towards swordfish caught outside of the U.S. EEZ off of California. Longline vessels unloading their catch in California ports are required to fish outside of the U.S. EEZ and have a California state commercial fishing license. Currently, approximately 40 to 50 longline vessels unload in California. Traditionally, many of these vessels landed in Hawaii, but closures around the Hawaiian Islands have moved fishing effort farther east, and as a result some longline vessels now land in California. The California longline fishery is currently not covered by a fishery management plan (FMP), nor is it subject to any requirements to carry observers. However, the Pacific Fishery Management Council is in the process of developing a pelagic FMP that will include the California longline fishery. The FMP is expected to be finalized in 2002.

Preliminary catch data has been compiled for the California longline fishery from skipper logbooks, dated between August 1, 1995 and December 31, 1999. The logbooks do not report any whale or dolphin interactions, but do show interactions with California sea lions and a Hawaiian monk seal. However, because the California longline fishery does not operate in the same area that Hawaiian monk seals occur, NMFS believes the Hawaiian monk seal identification may be incorrect. Regardless, the gear and methods of fishing by the California longline fishery are similar to those of the Hawaiian longline fishery. Therefore, NMFS expects that the California Longline Fishery will occasionally interact with marine mammals. For this reason, this fishery is proposed to be added to the LOF as a Category II fishery. The categorization of this fishery in Category II is consistent with the way NMFS has addressed other U.S. pelagic longline fisheries, all of which are Category I or II.

Caribbean Gillnet Fishery

NMFS proposes to add the Caribbean Gillnet Fishery to the LOF as a Category III fishery. NMFS is currently examining this fishery, and will determine in a future LOF if a Category II designation is more appropriate. The marine mammal species and stocks incidentally injured and killed include dwarf sperm whales (WNA stock) and West Indian manatees (Antillean stock). During the last 10 years, the Caribbean stranding network has recorded a gillnet interaction with a dwarf sperm whale from the Western North Atlantic stock. During the last 20 years, West Indian manatees have interacted with gillnet gear in the Caribbean. There are 991 gillnet (including trammel net) fishers in Puerto Rico. The number of participants in the U.S. Virgin Islands is unknown.

Caribbean Mixed Species Trap/Pot Fishery

Mixed species trap/pot fisheries exist in the Caribbean but were omitted from past LOFs. NMFS proposes to add the Caribbean Mixed Species Trap/Pot Fishery to the LOF as a Category III fishery. There are 501 mixed species trap/pot fishers in Puerto Rico. The number of participants in the U.S. Virgin Islands is unknown. NMFS is presently evaluating this fishery to determine if any species and stocks of marine mammals are incidentally injured and killed.

Gulf of Mexico Haul/Beach Seine Fishery

The Gulf of Mexico Haul/Beach Seine Fishery was omitted from past LOFs. NMFS proposes to add this fishery to the LOF as a Category III fishery. NMFS believes the specific gear configuration used and operational practices employed (i.e short soak times) warrant a Category III designation for this fishery. At present, no marine mammal interactions are documented.

Gulf of Mexico Mixed Species Trap/Pot Fishery

Mixed species trap/pot fisheries exist in the Gulf of Mexico, but were omitted from past LOFs. NMFS proposes to add the Gulf of Mexico Mixed Species Trap/Pot Fishery to the LOF as a Category III fishery. NMFS is evaluating this fishery to determine if any species and stocks of marine mammals are incidentally injured and killed and to determine the number of participants in this fishery.

Gulf of Mexico Mixed Species Trawl Fishery

The Gulf of Mexico Mixed Species Trawl fishery was omitted from previous LOFs. NMFS proposes to add this fishery to the LOF as a Category III fishery. The Gulf of Mexico Mixed Species Trawl Fishery would incorporate trawl fisheries occurring in the southeast region that are not currently in the LOF, which include a periodic cannonball jellyfish trawl fishery on the west coast of Florida, and a mullet trawl fishery in the Gulf of Mexico. NMFS estimates that 20 fishers participate in this fishery.

Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean Cast Net Fishery

NMFS proposes to add the Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean Cast Net Fishery to the LOF as a Category III fishery. The southeast U.S. stranding network reported two manatees (West Indian, FL) entangled in cast nets, although it is unknown whether these nets were recreational or commercial. Until NMFS can further evaluate the gear types as well as the spatial and temporal distribution of the commercial fisheries NMFS cannot confirm manatee interactions with this fishery. NMFS is presently evaluating the number of participants in the commercial sector.

Mid-Atlantic Pound Net Fishery

NMFS proposes to add the Mid-Atlantic Pound Net Fishery to the LOF. Stranding data for 1993-1997 suggest that this fishery has occasional takes of coastal bottlenose dolphins. Stranding network members who have observed dolphin behavior around pound nets report that dolphins play and feed around pound nets and can become entangled in the leader part of the nets. The leader is a net that guides fish into the pound net.

Data from the Chesapeake Bay suggest that the likelihood of bottlenose dolphins entanglement in pound net

leads may be affected by the mesh size of the lead net (Bellmund, *et al.*, 1997), but the information is not conclusive. A study conducted by the NMFS Beaufort Lab from 1988 to 1999 observing pound nets to study sea turtles resulted in no observations of bottlenose dolphin entanglements in the small mesh leader fishery (stretch mesh leader/lines ≤8 inches (20.3 cm)).[2] On each observed set, leaders were examined from the water's surface by boat. No bottlenose dolphin entanglements were observed. NMFS requests public comment on the issue of whether different mesh sizes used in pound net leads would result in differential bycatch rates of bottlenose dolphins or any other marine mammal stock.

NMFS proposes to specify the northern boundary of the Mid-Atlantic Pound Net fishery based on bottlenose dolphin distribution and the southern boundary as the North Carolina/South Carolina border. NMFS will revisit this gear type and similar gear types (e.g., staked traps, weirs) in a future LOF. The names ''staked traps'' and ''weirs'' are used interchangeably with ''pound nets'' and are fished as far north as Maine. NMFS has not yet analyzed all data on marine mammal interactions or fishing effort for this fishery complex and are therefore not prepared to propose a comprehensive change at this time.

NMFS proposes to classify the Mid-Atlantic Pound Net Fishery as a Category II fishery. There are 438 participants in the Mid-Atlantic Pound Net Fishery. Marine mammal species and stocks incidentally injured and killed include bottlenose dolphin (WNA coastal stock). The tier analysis justifying this classification follows:

Tier 1 Evaluation: Stranding data for 1993-1997 documents interactions between the Western North Atlantic Coastal stock of bottlenose dolphin and the Mid-Atlantic Pound Net Fishery. According to data presented in the draft 2000 SAR for 1996-1998, annual serious injury and mortality across all fisheries for bottlenose dolphin (WNA coastal stock) exceeds 10 percent of the PBR level (25). Therefore, this fishery is subject to Tier 2 analysis.

Tier 2 Evaluation: Two bottlenose dolphin carcasses were found entangled in the leads of pound nets in Virginia during 1993-1997, for an average of 0.4 bottlenose dolphin strandings per year. A third record of an entangled bottlenose dolphin in Virginia in 1997 may have been applicable to this fishery. This entanglement involved a bottlenose dolphin carcass found near a pound net with twisted line marks consistent with the twine in the nearby pound net lead rather than with monofilament gillnet gear.

Given that other sources of annual serious injury and mortality estimates (e.g., observer data) related to the Mid-Atlantic Pound Net Fishery are not available, the stranding data (0.4 bottlenose dolphins per year) were used as a minimum estimate of annual serious injury and mortality. Therefore, bottlenose dolphin mortality and serious injury from the Mid-Atlantic Pound Net Fishery is estimated to be between 1 percent and 50 percent of the PBR level (25) for the Western North Atlantic Coastal stock of bottlenose dolphins, placing this fishery in Category II.

North Carolina Long Haul Seine Fishery

NMFS proposes to add the North Carolina Long Haul Seine Fishery to Category II and separate this fishery from the Mid-Atlantic Haul/Beach Seine Fishery (see Other Proposed Changes to the List of Fisheries section for a definition of this fishery). According to the North Carolina Division of Marine Fisheries gear description, this fishery is defined as a multi-filament seine pulled by two boats for a distance of up to several miles. Fish are encircled and concentrated by pulling the net around a fixed stake. There are currently 33 participants in the North Carolina Long Haul Seine Fishery.

The marine mammal stranding network has recorded interactions between multi-filament gear types and bottlenose dolphins (WNA coastal stock). For one of these interactions, long haul seines were specifically implicated as the probable source of interaction. In addition, a stranding network representative observed the live release of three bottlenose dolphins from a long haul seine. These observations support the decision to place this fishery in Category II until NMFS has more data with which to support another classification.

Northeast Drift Gillnet Fishery

NMFS proposes to add the Northeast Drift Gillnet Fishery to the LOF as a Category II fishery to ensure that drift gillnet fisheries for species other than large pelagics are included in the LOF. Based on analogy with other gillnet fisheries, the Atlantic SRG recommended that NMFS place gillnet fisheries in Category II (unless evidence to the contrary is available).

Currently there is no listing for this type of gear in the Northeast. For the purposes of the LOF, drift gillnet, or driftnet, gear is gillnet gear that is free-floating on both ends or is free-floating on one end and attached to the vessel on the other end. Driftnet gear is not anchored to the bottom. In addition, fishing with drift gillnet gear of mesh size smaller than those typically used to target large pelagic species has been recorded for several finfish species, and this fishing effort occurring in the Northeast is currently not represented on the LOF.

The proposed Northeast Drift Gillnet Fishery would include all fishing with drift gillnet gear, regardless of target species or depth of the water column. The geographic boundaries for the proposed Northeast Drift Gillnet Fishery would extend from the U.S./Canadian border south to 72°30' W. longitude, and continue south from the south shore of Long Island, New York. The Northeast Drift Gillnet Fishery would not include any sink gillnet fishing occurring in the areas listed as Category III inshore gillnet fisheries.

Northeast Trap/Pot Fishery

NMFS has documented entanglement of whales, pinnipeds, and small cetaceans in fixed gear, although the gear involved in whale entanglements often cannot be attributed to a specific fishery. However, both lobster pot gear and sink gillnet gear have been identified in whale entanglements. Whales primarily become entangled in the vertical components of the gear (e.g., buoy lines), although entanglement also occurs in the horizontal components of the gear (e.g., gillnet panels, lobster pot groundlines). Small cetaceans and pinnipeds become entangled in net panels of fixed gear, and occasionally in buoy lines (small cetaceans) and traps (pinnipeds). The Gulf of Maine/U.S. Mid-Atlantic Lobster Trap/Pot Fishery (proposed to be renamed the Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery) was elevated to Category I in the 1997 LOF because of evidence of incidental take resulting in serious injury and mortality of right whales.

[2] From 1988-1994, 34 pound net trips, with 10-20 sets per trip, were observed in northern and southern Core Sound and southeastern Pamlico Sound. During 1995-1997, pound net trips were observed for over 13 weeks from September to December, ranging from southern Core Sound to eastern Albemarle Sound in 1995, and from southern Core Sound to central Pamlico Sound in 1996 and 1997.

There were 1,084 observed sets in 1995 (10 percent of pound nets set were sampled each week as determined by weekly aerial surveys flown to quantify pound net effort), 1,084 in 1996 (20 percent of pound nets set were sampled each week), and 1,162 in 1997 (11 percent of pound nets set were sampled each week). During 1998 and 1999 approximately 156 pound net observations occurred from June-August in the northern Core Sound each year, with moderate effort during the fall of 1998 and light effort during the fall of 1999.

Several other fixed gear fisheries in the Northeast use gear components similar to those used in the Lobster and Blue Crab Trap/Pot fisheries and, therefore, may take marine mammals if fishing effort overlaps marine mammal distribution. The majority of records of entanglements in fixed gear cannot be attributed to a specific fishery; therefore, NMFS cannot conclude that entanglement of marine mammals in trap/pot fisheries other than lobster and blue crab trap/pot gear is not occurring.

Trap/pot gear is generally fished either as single pots with one buoy line or as strings of pots with one or more buoy lines. In a time/area used by marine mammals, there may be virtually no difference in the potential for buoy line entanglement between similar gear components in different fisheries. Groundlines, which are known to entangle whales, are used for multi-pot trawls in several trap/pot fisheries. Furthermore, several trap/pot fisheries have developed in the Northeast that are not represented on the current LOF, including the hagfish, red crab, stone crab, and jonah crab fisheries. The hagfish pot fishery sets strings of hagfish barrels in known high-use areas for whales. A finback whale was entangled in hagfish gear in 1997. Entanglements in red crab gear have not been recorded in U.S. waters, but the gear is fished in whale habitat, and entanglements of right and humpback whales in red crab gear have been recorded in Canadian waters in recent years.

These other trap/pot fisheries may occasionally result in serious injury and mortality to marine mammals. Therefore, NMFS proposes to reclassify these fisheries based on analogy with the lobster trap/pot fishery. However, NMFS does not believe that the rate of incidental serious injury/mortality in non-lobster trap/pot fisheries would be at the Category I level, specifically because there are far fewer participants than in the lobster fishery. Therefore, NMFS proposes to reclassify the other trap/pot fisheries as Category II.

NMFS proposes to name this fishery the Northeast Trap/Pot Fishery. The Northeast Trap/Pot Fishery would extend from the U.S./Canadian border down to the 72°30' W. line, and continue south from the south shore of Long Island, New York to a line extending due east from the Virginia/North Carolina border. The other trap/pot fisheries in the Mid-Atlantic will be re-evaluated in a future LOF cycle for consistency with the changes proposed this year.

Southeastern U.S. Atlantic, Gulf of Mexico Golden Crab Trap/Pot Fishery

The Southeastern U.S. Atlantic, Gulf of Mexico Golden Crab Trap/Pot Fishery was omitted from past LOFs. NMFS proposes to add this fishery to the LOF as a category III fishery. NMFS has no documentation of any marine mammal species and stocks incidentally injured and killed in this fishery. The gear rarely uses buoy lines to the surface, and therefore NMFS believes it is unlikely to result in entanglement. There are 10 participants in this fishery.

Southeastern U.S. Atlantic, Gulf of Mexico Stone Crab Trap/Pot Fishery

The Southeastern U.S. Atlantic, Gulf of Mexico Stone Crab Trap/Pot Fishery was omitted from past LOFs. NMFS proposes to add this fishery to the LOF as a category III fishery. The southeast U.S. stranding network has reported one bottlenose dolphin entangled in this fishery in 1998. Marine mammal species and stocks incidentally injured and killed in this fishery include bottlenose dolphin (Eastern Gulf of Mexico coastal stock). There are 4,453 participants in this fishery.

Fisheries Removed from the LOF

Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Drift Gillnet Fishery

NMFS proposes to remove this fishery from the LOF because NMFS regulations now prohibit this as a gear type for the swordfish and tuna component of this fishery. Any drift gillnet fisheries that do occur would be incorporated into the existing and proposed LOF gillnet listings.

Organizational Changes to the LOF

AK Clam Fishery

NMFS proposes to combine the AK Clam Hand Shovel and the AK Clam Mechanical/Hydraulic Fisheries into one AK Clam Fishery. The new fishery designation would include participants in the southeast AK Geoduck Dive Fishery, which are currently considered part of the AK Urchin and Other Fish/Shellfish Fishery. Since each of these fisheries is currently in Category III, NMFS proposes that the new AK Clam Fishery also be in Category III.

AK Southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska Sablefish Longline/Set Line (Federally Regulated Waters)

NMFS proposes to change the names of several AK longline/set line fisheries to make the names of these fisheries in the LOF consistent with the way these fisheries are addressed in the SARs. NMFS proposes to split the AK Southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska Sablefish Longline/Set Line (federally regulated waters) into the AK Bering Sea, Aleutian Islands Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish), the AK Gulf of Alaska Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish), and the AK State-Managed Waters, Groundfish Longline/Set Line (including sablefish, rockfish, and miscellaneous finfish) Fisheries. The AK State Waters Sablefish Longline/Set Line and AK Miscellaneous Finfish/Groundfish Longline/Set Line Fisheries would be incorporated appropriately into the three new fisheries. These changes would make the LOF directly comparable with the SARs and observer data for these longline fisheries.

Bluefish, Croaker, Flounder Trawl Fishery

NMFS proposes to combine the Bluefish, Croaker, Flounder Trawl Fishery into the Mid-Atlantic Mixed Species Trawl Fishery. The Bluefish, Croaker, Flounder Trawl Fishery may consist of at least two separate fisheries, and although bluefish, croaker, and flounder are often caught, they may not always be the target species. Therefore, placing this fishery into the broader Mid-Atlantic Mixed Species Trawl Fishery will ensure that this fishing activity is covered by the LOF. The 550 participants currently listed in the Bluefish, Croaker, Flounder Trawl Fishery may already be reflected in the number of participants for the Mid-Atlantic Mixed Species Trawl Fishery. NMFS will evaluate the number of participants in these fisheries and provide an update in future LOFs.

Caribbean Haul/Beach Seine Fishery

NMFS proposes to combine the Caribbean Haul Seine and Caribbean Beach Seine fisheries into one fishery called the Caribbean Haul/Beach Seine Fishery. Marine mammal species and stocks incidentally injured and killed include the West Indian manatee Antillean stock. The Florida stock of West Indian manatee was incorrectly listed as interacting with this fishery in past LOFs.

Gulf of Maine, Southeast U.S. Atlantic Coastal Shad, Sturgeon Gillnet Fishery

Sturgeon is now a prohibited species in both state and Federal waters. Therefore, NMFS proposes to remove this Category III fishery from the LOF to reflect these changes.

Gillnet fishing for shad in the Southeast is included in the proposed Category II Southeast Atlantic Gillnet Fishery. Gillnet fishing for shad in the Northeast is included in the Northeast Sink Gillnet Fishery, the Northeast Anchored Pelagic Gillnet Fishery, and/or the Northeast Drift Gillnet Fishery, depending on the type of gear used. Gillnet fishing for shad in the Mid-Atlantic (i.e., the 73o30' W line to the North Carolina/South Carolina border) is included in the U.S. Mid-Atlantic Coastal Gillnet Fishery (57 FR 20328, May 12, 1992).

Gulf of Maine, U.S. Mid-Atlantic Mixed Species Trap/Pot Fishery

NMFS proposes to separate the Gulf of Maine, U.S. Mid-Atlantic Mixed Species Trap/Pot Fisheries into two separate listings: the Northeast Trap/Pot Fishery and the Mid-Atlantic Mixed Species Trap/Pot Fishery. The marine mammal species and stocks incidentally injured and killed in the Mid-Atlantic Mixed Species Trap/Pot Fishery include the humpback whale (Gulf of Maine stock), minke whale (Canadian east coast stock), and harbor porpoise (Gulf of Maine/Bay of Fundy stock). Additional information on the Northeast Trap/Pot Fishery is described later in this preamble. NMFS is presently evaluating the Mid-Atlantic Mixed Species Trap/Pot Fishery to determine the target species and number of participants. NMFS will evaluate this fishery in a future LOF for consistency with the Northeast Trap/Pot Fishery.

Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean Spiny Lobster Trap/Pot Fishery

NMFS proposes to divide the Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean Spiny Lobster Trap/Pot Fishery into two separate fisheries: the Florida Spiny Lobster Trap/Pot Fishery and the Caribbean Spiny Lobster Trap/Pot Fishery.

Marine mammal species and stocks incidentally injured and killed in the Florida Spiny Lobster Fishery include the West Indian manatee (FL stock) and bottlenose dolphin (WNA coastal stock). This fishery occurs off of Florida in the Southeastern U.S. Atlantic and Gulf of Mexico. NMFS is currently evaluating the number of participants in the Florida spiny lobster fishery.

There are no known marine mammal species and stocks incidentally injured and killed as a result of the Caribbean Spiny Lobster Fishery. There are 197 participants in this fishery in Puerto Rico. The number of participants in the U.S. Virgin Islands is unknown.

Name Changes to Fisheries in the LOF

AK Octopus/Squid Pot Fishery

The LOF previously included a listing for the AK Octopus/Squid ''Other'' Fishery. Although this fishery originally included several gear types (dive gear, hand pick, mechanical jigging, and pot), only the pot fishery is currently active. As a result, NMFS proposes to change the name to the AK Octopus/Squid Pot Fishery and list this fishery with the other Category III pot fisheries.

AK Southeast Alaska Herring Food/Bait Pound Net Fishery

The name of the AK Southeast Alaska Herring Food/Bait Pound Net Fishery is changed to the AK Southeast Herring Roe/Food/Bait Pound Net Fishery.

Gulf of Maine Small Pelagics Surface Gillnet Fishery

NMFS proposes to change the name of the Category II Gulf of Maine Small Pelagics Surface Gillnet Fishery to the Northeast Anchored Pelagic Gillnet Fishery to include anchored pelagic gillnet effort in other parts of the Northeast and for species other than small pelagics in the LOF. The Northeast Anchored Pelagic Gillnet Fishery would include the use of gillnet gear of any size and for any target species that is anchored and fished in the upper two thirds of the water column. The geographic boundaries for the proposed Northeast Anchored Pelagic Gillnet Fishery would extend from the U.S./Canadian border to 72°30' W. longitude, and continue south from the south shore of Long Island, New York. The Northeast Anchored Pelagic Gillnet Fishery would not include any sink gillnet fishing occurring in the areas listed as Category III inshore gillnet fisheries.

Gulf of Maine/U.S. Mid-Atlantic Lobster Trap/Pot Fishery

NMFS proposes to change the name of this fishery from the Gulf of Maine/U.S. Mid-Atlantic Lobster Trap/Pot Fishery to the Northeast/Mid-Atlantic American Lobster Trap/Pot Fishery to reflect the distinction between the American Lobster Fishery and the Spiny Lobster Fishery. The new name is also intended to clarify that fishing in other areas of the Northeast, for example offshore areas that might not be considered part of the Gulf of Maine, are included in the LOF.

Mid-Atlantic Haul Seine Fishery

The name of the Mid-Atlantic Haul Seine fishery is changed to the Mid-Atlantic Haul/Beach Seine fishery for clarity. This fishery includes seines where one end is secured (e.g., swipe net, long seine) as well as seines that may be secured at both ends and hauled up on the beach.

Mid-Atlantic Mixed Species Stop/Seine/Weir Fishery

The U.S. Mid-Atlantic Mixed Species Stop/Seine/Weir Fishery is changed to the U.S. Mid-Atlantic Mixed Species Stop Seine/Weir Fishery to be consistent with the category title for this fishery.

Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery

The Mid-Atlantic component of the Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery is removed, and the name changed to the Southeastern U.S. Atlantic, Gulf of Mexico Shrimp Trawl Fishery. The new name reflects that this fishery operates from North Carolina into the Gulf of Mexico.

Southeast AK Salmon Drift Gillnet

The name of the Southeast AK Salmon Drift Gillnet Fishery is changed to the AK Southeast Salmon Drift Gillnet Fishery.

Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean Snapper-Grouper and Other Reef Fish Bottom Longline/Hook-and-Line Fishery

NMFS proposes to revise the name of the Southeastern U.S. Atlantic, Gulf of Mexico Snapper-Grouper and Other Reef Fish Bottom Longline/Hook-and-Line Fishery to include the Caribbean. There are 1,349 bottom longline/hook-and-line fishers in Puerto Rico. The number of participants in the U.S. Virgin Islands is unknown.

Southeastern U.S. Atlantic, Caribbean Haul Seine Fishery

The name of the Southeastern U.S. Atlantic, Caribbean Haul Seine Fishery is changed to the Southeastern U.S. Atlantic Haul/Beach Seine Fishery.

Other Proposed Changes or Clarifications to the LOF

Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline Fishery

The estimated number of participants in the Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline Fishery is updated to 443. This represents the number of permits issued, not active participants.

Calico Scallops Trawl Fishery

The estimated number of participants in the Calico Scallops Trawl Fishery is updated to 12.

Category II Haul Seine Fisheries

The name of the Haul Seine Fisheries title is changed to Haul/Beach Seine Fisheries for clarity.

Category III Haul Seine

The name of the Haul Seine Fisheries title under Category III is changed to Haul/Beach Seine Fisheries and the Beach Seine Fisheries title is removed for clarity. The Caribbean Beach Seine Fishery is changed to the Caribbean Haul/Beach Seine Fishery and included in the new category.

Mid-Atlantic Menhaden Purse Seine

The list of marine mammal species and stocks incidentally injured and killed in the Mid-Atlantic Menhaden Purse Seine Fishery is updated to reflect a fisher report of a humpback whale becoming entangled in the purse seine net, which was subsequently released alive.

Northeast Sink Gillnet Fishery

NMFS is not proposing to change the definition or categorization of this fishery, but provides the following explanation for clarification and comparison with fisheries for which changes are proposed. The Northeast Sink Gillnet Fishery is retained in Category I with the current geographic boundaries defining this fishery. The Northeast Sink Gillnet Fishery continues to include all fishing with sink gillnet gear, regardless of target species, from the U.S./Canadian border to 72°30' W. longitude, and continuing south from the south shore of Long Island, New York. To differentiate from other LOF gillnet listings, sink gillnet gear is considered to be anchored gillnet gear fished in the lower third of the water column. The Northeast Sink Gillnet Fishery would not include any sink gillnet fishing occurring in the areas listed as Category III inshore gillnet fisheries.

Southeastern U.S. Atlantic Shark Gillnet Fishery

The list of marine mammal species and stocks incidentally injured and killed in the Southeastern U.S. Atlantic Shark Gillnet Fishery is updated to reflect an Atlantic spotted dolphin that was reported incidentally taken and released alive.

Southeastern U.S. Stranding Data Review

The Southeast Fisheries Science Center is presently conducting a comprehensive review of all stranding records and if there are any changes in these estimates they will be listed in a subsequent LOF. At this time, the estimates of incidental mortality and serious injury presented in this proposed LOF are considered minimum.

References

Bellmund, S.A., Musick, J.A., Klinger, R.C., Byles, R.A., Keinath, J.A., and Barnard, D.E. 1997. Ecology of Sea Turtles in Virginia. Final Report to National Marine Fisheries Service Northeast Region. Contract number NA80FAC-00004. Virginia Institute of Marine Science, Gloucester Point, Virginia.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA including proposed changes. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fishers' reports. This list includes all species or stocks known to incur injury or mortality in a given fishery. However, not all species or stocks identified are necessarily independently responsible for a fishery's categorization. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to injure or kill marine mammals, as discussed in the final LOF for 1996 (60 FR 45086, December 28, 1995).

Commercial fisheries in the Pacific Ocean (including Alaska) are included in Table 2; commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean are included in Table 3. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the Endangered Species Act.

TABLE 2.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery Description	Estimated no. of vessels/persons	Marine mammal species and stocks incidentally killed/ injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet.	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet	130	Steller sea lion, Eastern U.S.*+ Sperm whale, CA/OR/WA*+ Dall's porpoise, CA/OR/WA Pacific white sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA* Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico* Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
Category II		
GILLNET FISHERIES:		
AK Bristol Bay salmon drift gillnet	1,903	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern north Pacific Spotted seal, AK Pacific white-sided dolphin, North Pacific
AK Bristol Bay salmon set gillnet	1,014	Harbor seal, Bering Sea Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific* Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Steller sea lion, Western U.S.*+ Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet*+
AK Cook Inlet salmon set gillnet	745	Steller sea lion, Western U.S.*+ Harbor seal, GOA Harbor porpoise, GOA Dall's porpoise, AK Beluga whale, Cook Inlet*+
AK Kodiak salmon set gillnet	188	Harbor seal, GOA Harbor porpoise, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Northern fur seal, Eastern Pacific* Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/Aleutian Islands salmon set gillnet	116	Steller sea lion, Western U.S.*+ Harbor porpoise, Bering Sea

TABLE 2.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Prince William Sound salmon drift gillnet	541	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA Pacific white-sided dolphin, North Pacific Harbor porpoise, GOA Dall's porpoise, AK Sea Otter, AK
AK Southeast salmon drift gillnet	481	Steller sea lion, Eastern U.S.*+ Harbor seal, Southeast AK Pacific white-sided dolphin, North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific*+
AK Yakutat salmon set gillnet	170	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line treaty Indian fishing is excluded).	725	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, central North Pacific*+
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA*
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	2	None documented
LONGLINE FISHERIES:		
California longline	45	California sea lion
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Humpback whale, Central North Pacific*+ False killer whales, HI Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI Sperm whale, HI
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented
Category III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.*+
AK Prince William Sound salmon set gillnet	30	Steller sea lion, Western U.S.*+ Harbor seal, GOA
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II).	953	Harbor seal, GOA

TABLE 2.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/persons	Marine mammal species and stocks incidentally killed/injured
CA herring purse seine	100	Bottlenose dolphin, CA coastal California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
HI opelu/akule net	16	None documented
HI purse seine	18	None documented
HI throw net, cast net	47	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES		
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Western U.S.*+ Steller sea lion, Eastern U.S.*+
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
LONGLINE/SET LINE FISHERIES: HI trolling, rod and reel.		
AK Bering Sea, Aleutian Islands groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	115	Northern elephant seal, CA breeding Killer whale, Eastern North Pacific resident Killer whale, transient Steller sea lion, Western U.S.*+ Pacific white-sided dolphin, North Pacific Dall's porpoise, AK Harbor seal, Bering Sea
AK Gulf of Alaska groundfish longline/set line (federally regulated waters, including miscellaneous finfish and sablefish).	867	Steller sea lion, Western U.S.*+ Harbor seal, Southeast AK Northern elephant seal, CA breeding
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.*+
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish).	731	None documented
CA shark/bonito longline/set line	10	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK Bering Sea and Aleutian Islands Groundfish Trawl	166	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern pacific* Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Pacific white sided dolphin, North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Harbor seal, GOA Bearded seal, AK Ringed seal, AK Spotted seal, AK Dall's porpoise, AK Ribbon seal, AK Northern elephant seal, CA breeding Sea otter, AK Pacific walrus, AK Humpback whale, Central North Pacific*+ Humpback whale, Western North Pacific*+
AK food/bait herring trawl	3	None documented

TABLE 2.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/persons	Marine mammal species and stocks incidentally killed/ injured
AK Gulf of Alaska groundfish trawl	198	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA Dall's porpoise, AK Northern elephant seal, CA breeding Fin whale, Northeast Pacific
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawlWA, OR, CA groundfish trawl.	2	None documented
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Pacific white-sided dolphin, central North Pacific Dall's porpoise, CA/OR/WA California sea lion, U.S. Harbor seal, OR/WA coast
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea, Gulf of Alaska finfish pot	257	Harbor seal, GOA Harbor seal, Bering Sea Sea otter, AK
AK crustacean pot	1,852	Harbor porpoise, Southeast AK
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	None documented
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal*+
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal*+
Hi inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Rough-toothed dolphin, HI Bottlenose dolphin, HI Hawaiian monk seal*+
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squiding, spear	267	None documented

TABLE 2.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery Description	Estimated no. of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA, CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI ''other''	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

* Marine mammal stock is strategic or is proposed to be listed as strategic in the draft SARs for 2000.
+ stock is listed as threatened or endangered under the Endangered Species Act (ESA) or as depleted under the MMPA. List of Abbreviations Used in Table 2: AK, Alaska; GOA; CA , California; HI, Hawaii Gulf of Alaska; OR, Oregon, and WA, Washington

TABLE 3.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Category I		
GILLNET FISHERIES:		
Northeast sink gillnet	341	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA* Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA Common dolphin, WNA * Fin whale, WNA *+ Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
U.S. Mid-Atlantic coastal gillnet	>655	Humpback whale, WNA*+ Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF* Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White sided dolphin, WNA Common dolphin, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline ..	<200	Humpback whale, WNA*+ Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF*
TRAP/POT FISHERIES:		

TABLE 3.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Northeast/Mid-Atlantic American lobster trap/pot	13,000	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Fin whale, WNA*+ Minke whale, Canadian east coast Harbor seal, WNA
TRAWL FISHERIES:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA*
Category II		
GILLNET FISHERIES:		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, and Estuarine*
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal*+
Northeast anchored pelagic gillnet	133	Humpback whale, WNA*+ White-sided dolphin, WNA* Harbor seal, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	640	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal* North Atlantic right whale, WNA*+ Atlantic spotted dolphin, WNA
TRAWL FISHERIES:		
Atlantic herring midwater trawl (including pair trawl)	17	Harbor seal, WNA
TRAP/POT FISHERIES:		
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal* West Indian manatee, FL
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine* West Indian manatee, FL*+
Northeast trap/pot	unknown	Fin whale, WNA
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal* Harbor porpoise, GME/BF*
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal*
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal*
POUND NET FISHERIES:		
Mid-Atlantic pound net	438	Bottlenose dolphin, WNA coastal*
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	Harbor porpoise, GME/BF
Delaware Bay inshore gillnet	60	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Long Island Sound inshore gillnet	20	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
TRAWL FISHERIES:		
Calico scallops trawl	12	None documented
Crab trawl	400	None documented
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Gulf of Maine northern shrimp trawl	320	None documented

TABLE 3.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Gulf of Mexico mixed species trawl	20	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* White-sided dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal*+
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA*
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal*+ Humpback whale, WNA*+
U.S. Atlantic tuna purse seine	unknown	None documented
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line	46	Harbor seal, WNA Gray seal, Northwest North Atlantic Humpback whale, WNA
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line.	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/ hook-and-line.	124	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, U.S. Mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	unknown	West Indian manatee, FL*+ Bottlenose dolphin, WNA coastal*+
Gulf of Mexico mixed species trap/pot	unknown	None documented
Mid-Atlantic mixed species trap/pot	unknown	Humpback whale, Gulf of Maine Minke whale, Canadian east coast Harbor porpoise, GM/BF
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	Bottlenose dolphin, Eastern Gulf of Mexico coastal
U.S. Mid-Atlantic eel trap/pot	>700	None documented
U.S. Mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.	30	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA* Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir (except the North Carolina roe mullet stop net).	500	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented

TABLE 3.—PROPOSED LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally injured and killed
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net.	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented

* Marine mammal stock is strategic or is proposed to be listed as strategic in the draft SARs for 2000.
+ Stock is listed as threatened or endangered under the ESA or as depleted under the MMPA. List of Abbreviations Used in Table 3 FL - Florida NC - North Carolina GA - Georgia SC - South Carolina GME/BF - Gulf of Maine/Bay of Fundy TX - Texas GMX - Gulf of Mexico WNA - Western North Atlantic

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed LOF for 2001, if adopted, would not have a significant economic impact on a substantial number of small entities for the following reasons.

Under existing regulations, all fishers participating in Category I or II fisheries, must register, obtain an Authorization Certificate, and pay a fee of $25. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 22,400 fishing vessels operate in Category I or II fisheries, and, therefore, are required to register. However, the registration for the majority of these fishers has been integrated with existing state or Federal registration programs, and those fishers do not need to register separately under the MMPA. Currently, approximately 3,800 fishers register directly with NMFS under the MMPA authorization program.

This proposed rule would require the registration of approximately 22,219[3] additional fishers. Fisheries that are proposed to be elevated to Category II and whose participants would be required to register with NMFS include the Hawaii Swordfish, Tuna, Billfish, Mahi Mahi Wahoo, Oceanic Sharks, Longline/Set Line Fishery (140 participants), the North Carolina Inshore Gillnet Fishery (94 participants), the Gulf of Mexico Gillnet Fishery (724 participants), the Southeast Atlantic Gillnet Fishery (640 participants), the Atlantic Blue Crab Fishery (>16,000), and the Gulf of Mexico Blue Crab Fishery (4,113 participants). The California Longline Fishery (45 participants), the Mid-Atlantic Pound Net Fishery (438 participants), the Northeast Trap/Pot Fishery (unknown number of participants), the North Carolina Long Haul Seine Fishery (33 participants) and the Northeast Drift Gillnet Fishery (unknown number of participants) are new fisheries that have been proposed to be added to the LOF this year as Category II fisheries.

Participants in fisheries elevated to Category II or added to the LOF may already participate in Category I or II fisheries for which they currently register under the MMPA or participate in Federal or State fisheries with integrated registration programs, and therefore would not be required to register separately under the MMPA or pay the $25 registration fee.

The $25 registration fee, with respect to anticipated revenues, is not considered significant. NMFS will also consider integrating registration requirements with other fisheries to minimize the registration burden on fishers. NMFS would waive the registration fee for fisheries where an integrated registration program can be arranged.

As a result of the certification, a regulatory flexibility analysis was not prepared.

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 Office of Management and Budget (OMB) control number. This proposed rule does not contain new collection-of-information requirements subject to the Paperwork Reduction Act; however, the proposed addition of fisheries to Category II in the LOF could result in up to 22,219 fishers being subject to an existing collection-of-information requirement. However, NMFS expects that most of these fishers will not be required to do any additional reporting. For example, this number includes 16,000 fishers who have historically participated in the Atlantic Blue Crab Trap/Pot Fishery and 4,113 fishers who have historically participated in the Gulf of Mexico Blue Crab Trap/Pot Fishery. NMFS is currently evaluating the current number of participants in these two fisheries and is planning to integrate registration with existing state or Federal registration programs as soon as possible. Also, many of the fishers may already participate in other Category I or II fisheries or participate in Federal or state fisheries with integrated registration programs and would not be required to register separately under the MMPA.

The collection of information for the registration of fishers under the MMPA has been approved by the OMB under OMB control number 0648-0293 (0.25 burden hours per report for new registrants and 0.15 burden hours for renewals). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burdens to NMFS and OMB (see **ADDRESSES**).

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

An environmental assessment was prepared under the National

[3]This number includes 16,000 fishers who have historically participated in the Atlantic Blue Crab Fishery. NMFS is currently evaluating the current number of participants and will provide that information in a future LOF cycle.

Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment. This proposed rule, if implemented, would not make any significant change in the management of reclassified fisheries, and therefore this proposed rule is not expected to change the analysis or conclusion of the 1995 EA. The classification of fisheries on the LOF is not considered to be a management action. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS would prepare an environmental document as required under NEPA specific for that action.

Changes to the proposed LOF for 2001 will not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would impact threatened or endangered species. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS would conduct consultation under section 7 of the ESA specific for that action.

This proposed rule will have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This proposed rule will not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Such comments should be sent to the Office of Protected Resources (see **ADDRESSES**).

Dated: January 12, 2001.

William T. Hogarth,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–1542 Filed 1–19–01; 8:45 am]

BILLING CODE 3510–22–S

Notices

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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.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting

TIME: 10:00 am–4:00 pm.

PLACE: ADF Headquarters.

DATE: Friday, 26 January 2001.

STATUS: Open.

Agenda

10:00 am Chairman's Report
10:30 am–12:00 pm President's Report
12:00 pm Lunch
1:00–2:30 pm President's Report (Continued)
2:30–4:00 pm Executive Session (Closed)
4:00 pm Adjournment

If you have any questions or comments, please direct them to Doris Martin, General Counsel, who can be reached at (202) 673–3916.

Nathaniel Fields,

President.

[FR Doc. 01–1860 Filed 1–17–01; 4:19 pm]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

Farmland Protection Program

AGENCY: Commodity Credit Corporation, Natural Resources Conservation Service, Department of Agriculture (USDA).

ACTION: Notice of request for proposals.

SUMMARY: Section 388 of the Federal Agriculture Improvement and Reform Act of 1996 established the Farmland Protection Program (FPP). The Secretary of Agriculture delegated the authority for FPP to the Chief of the Natural Resources Conservation Service (NRCS), who is a vice president of the Commodity Credit Corporation (CCC). The Agricultural Risk Protection Act of 2000 provides $10 million in financial and technical assistance for the purposes described in FPP in fiscal year 2001. The CCC requests proposals from federally recognized Indian tribes, States, units of local government, and non-governmental organizations to cooperate in the acquisition of conservation easements or other interests in prime, unique, or other productive soil that is subject to a pending offer, for the purpose of limiting conversion to nonagricultural uses of that land. An additional $20 million has also been provided for FPP in accordance with the Conference Report on H.R. 4577, Department of Labor, Health, and Human Services, and Education and Related Agencies Appropriations (House of Representatives—December 15, 2000). This amount excludes proposals from non-governmental organizations and is dedicated only to proposals from federally recognized Indian tribes, States, and units of local government. USDA has designated up to $5 million to be provided to State agencies that have a long and effective history of purchasing development rights on farmland.

DATES: Proposals must be received in the NRCS State Office within 45 days of the date of this notice.

ADDRESSES: Written proposals should be sent to the appropriate NRCS State conservationist, Natural Resources Conservation Service, USDA. The telephone numbers and addresses of the NRCS State conservationists are attached in the appendix of this notice.

FOR FURTHER INFORMATION CONTACT: Douglas J. Lawrence, NRCS; phone: (202) 720–1510; fax: (202) 690–6473; or e-mail: doug.lawrence@usda.gov; Subject: 2001 FPP.

SUPPLEMENTARY INFORMATION:

Background

Urban sprawl continues to threaten the Nation's farmland. Social and economic changes over the past three decades have influenced the rate at which land is converted to non-agricultural uses. Population growth, demographic changes, preferences for larger lots, inexpensive fuel costs, expansion of transportation systems, and economic prosperity have contributed to increases in agricultural land conversion rates.

The amount of farmland lost to development is not the only significant concern. Another cause for concern is the quality and pattern of farmland being converted. In most States, prime farmland is being converted at two to four times the rate of other, less-productive agricultural land.

There continues to be an important national interest in the protection of farmland. Once developed, productive farmland with rich topsoil is effectively lost forever, placing future food security for the Nation at risk. Land use devoted to agriculture provides an important contribution to environmental quality, history, and scenic beauty.

Availability of Funding

Effective on the publication date of this notice, the CCC announces the availability, until September 30, 2001, of $30 million for FPP. The CCC, acting through the appropriate NRCS State conservationist, must receive proposals for participation within 45 days of the date of this notice. State, tribal, and local governmental entities may apply for money under funding sources; however, non-governmental organizations are only eligible for the original $10 million provided by the Agricultural Risk Protection Act of 2000.

Selection will be based on the criteria established in this notice. Selected eligible entities may receive no more than 50 percent of the purchase price for each conservation easement, not to exceed the fair market value of the interest to be purchased. Pending offers by an eligible entity must be for the acquisition of an easement for a minimum duration of 30 years.

Definitions

Chief means the Chief of NRCS, USDA.

Eligible entities means federally recognized Indian tribes, States, units of local government, and non-governmental organizations that have pending offers for the acquisition of conservation easements for the purposes of protecting the agricultural use. Non-governmental organizations are only eligible for the $10 million originally authorized by the Agricultural Risk Protection Act of 2000.

Field Office Technical Guide means the official NRCS guidelines, criteria,

and standards for planning and applying conservation treatments and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

Land Evaluation and Site Assessment (LESA) means the Federal land site evaluation system used to rank land, based on soil potential for agriculture, as well as social and economic factors, such as location, access to market, and adjacent land use.

Non-governmental organization, as defined in section 211(a) of the Agricultural Risk Protection Act of 2000, is any organization that:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), or (iii) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that code that is exempt from taxation under 501(a) of that code;

(3) Is described in section 509(a)(2) of that code; or

(4) Is described in section 509(a)(3) of that code and is controlled by an organization described in section 509(a)(2) of that code.

Prime and unique farmland are defined separately, as follows:

• Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion, as determined by the Secretary.

• Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, as determined by the Secretary. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods. Examples of such crops include citrus, tree nuts, olives, cranberries, fruits, and vegetables. Additional information on the definition of prime, unique, or other productive soil can be found in section 1540(c)(1) of the Farmland Protection Policy Act (Public Law 97–98) (7 U.S.C. 4201, *et seq.*).

Purchase price means the fair market value ascertained through standard real property appraisal methods. Fair market value is defined as the price at which a willing seller and a willing buyer will trade.

State conservationist means the NRCS employee authorized to direct and supervise NRCS activities in a State or the Caribbean Area (Puerto Rico and the Virgin Islands).

Overview of the Farmland Protection Program

The CCC will accept proposals submitted to the NRCS State offices from eligible entities, including federally recognized Indian tribes, States, units of local government, and non-governmental organizations that have pending offers for the acquisition of conservation easements for the purposes of protecting the agricultural use of the land. Reference information regarding the FPP can be found in the ''Catalog of Federal Domestic Assistance #10.913.''

All proposals must be submitted to the appropriate NRCS State conservationist within 45 days of the date of this notice. The NRCS State conservationist may consult with the State Technical Committee (established pursuant to 16 U.S.C. 3861) to evaluate the merits of the proposals.

The NRCS State conservationist will review and evaluate the proposals based on State, local program, tribal, or non-governmental organization eligibility, land eligibility, and the extent to which the proposal will protect prime, unique, or other productive soil. Proposals must provide adequate proof of a pending offer for the subject land. Proposals submitted directly to the NRCS national office will not be accepted and will be returned to the submitting entity.

The NRCS State conservationist will transmit a cover letter with a list of the ranked proposals and properties that meet the criteria established in this notice to the NRCS national office in Washington, DC, where the final selection of proposals will occur. Once selected, eligible entities must work with the appropriate NRCS State conservationist to finalize and sign cooperative agreements, incorporating all necessary FPP terms.

The conveyance document used by the eligible entity must be reviewed and approved by the NRCS national office before being recorded. Since title to the easement is held by an entity other than the United States, the conveyance document must contain a clause that all rights conveyed by the landowner under the document will become vested in the United States should the federally recognized Indian tribe, State, local government entity, or non-governmental organization (*i.e.*, the grantee(s)) abandon or attempt to terminate the conservation easement. As a condition for participation, all land in the easement shall be included in a conservation plan developed and implemented according to the NRCS Field Office Technical Guide.

Organization and Land Eligibility Selection Criteria

To be eligible, a federally recognized Indian tribe, State, unit of local government, or non-governmental organization must have a farmland protection program that purchases agricultural conservation easements for the purpose of protecting prime, unique, or other productive soil by limiting conversion to nonagricultural uses. In addition, applicants must provide information in their proposals demonstrating their ability, both legally and programmatically, to acquire conservation easements for the purpose of limiting conversion to nonagricultural uses.

The following land, if subject to a pending offer by an eligible entity, is eligible for enrollment in the FPP:

(1) Land with prime, unique, or statewide and locally important farmland and

(2) Other incidental land that would not otherwise be eligible, but when considered as part of a pending offer, NRCS determines that inclusion of such land would significantly augment protection of the associated farmland.

Proposal Criteria

Proposals must contain the information set forth below in order to receive consideration:

1. Organization and programs: Eligible entities must describe their farmland protection program and their record of acquiring and holding permanent agricultural land protection easements or other interests. Information provided in the proposal should:

(a) Demonstrate a commitment to long-term conservation of agricultural lands through the use of voluntary easements or other legal devices to protect farmland from conversion to nonagricultural uses;

(b) Demonstrate a capability to acquire, manage, and enforce easements and other interests in land;

(c) Demonstrate the availability of funds equal to at least 50 percent of the projected easement purchase price for the proposed land parcel(s); and

(d) Have pending offer(s). A pending offer is a bid, contract, or option extended to a landowner by an eligible entity to acquire a conservation easement or other interests in land to limit nonagricultural uses of the land before the legal title to these rights has

been conveyed. The pending offers must be for the primary purpose of protecting topsoil by limiting conversion to nonagricultural uses.

2. To ensure that the maximum efficiency of dollars is obtained, USDA is designating a reserve, not to exceed $5 million, to States that have a long history of purchasing development rights and that have a developed infrastructure for protection of farmland, along with a strong program for State funding of such efforts. To be eligible, State agencies must meet the following criteria, in addition to the criteria set forth above:

(a) Possess both a high public and private investment per capita in the purchase of development rights on working farms over the last 10 years;

(b) Have provided on-going appropriations for the purchase of development rights over the last 10 years;

(c) Have established partnerships with private nonprofit land trusts; and

(d) Are located in States where the average cost of purchasing development rights, for all entities involved, is below $1,000 per acre.

3. Lands to be acquired: The proposal should describe the lands to be acquired with assistance from FPP. Specifically, the proposal should include:

(a) A map showing the proposed protected area(s);

(b) The amount and source of funds currently available for each easement (or other interest) to be acquired;

(c) The criteria used to set the acquisition priorities; and

(d) A detailed description of the land parcel(s), including:

(i) The priority of the offer;

(ii) The name(s) of the landowner(s);

(iii)The address and location map(s) of the parcel(s);

(iv) The size of the parcel in acres;

(v) The acres of the prime, unique, or statewide and locally important soil in the parcels. Farmland that is of statewide or local importance is used for the production of food, feed, fiber, forage, or oilseed crops. The appropriate State or local government agency(s) determines statewide or locally important farmland with concurrence from the Secretary.

(vi) A map showing the location of other protected parcels in relation to the land parcels proposed to be protected;

(vii) Estimated cost of the easement(s): The consideration to be paid to any landowners for the conveyance of any lands or interests in lands shall be no more than the purchase price of the land or interests conveyed, as determined by an appraiser licensed in the State. All parcels nominated for FPP assistance shall be appraised and all appraisals shall conform to the Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 1992).

(viii) Type of instrument (*e.g.*, easement deed) used to prevent agricultural land conversion;

(ix) Indication of the accessibility to markets;

(x) Indication of an existing agricultural infrastructure, on- and off-farm, and other support system(s);

(xi) Statement regarding the level of threat from urban development;

(xii) Other factors from an evaluation and assessment system used to set priorities. If the eligible entity used the LESA system or a similar land evaluation system as its tool, include the value(s) (*i.e.* score(s)) for the land parcels slated for acquisition; and

(xiii) Other information that may be relevant.

In submitting proposals, entities should indicate on the cover of the proposal whether they are a nongovernmental organization, local, Tribal or State agency. In the case of a State agency, if the State is applying for funds that are reserved for State agencies with a long history of farmland protection, State agencies must include documentation to support the criteria outlined in section 2 under Proposal Criteria.

NRCS Role

Once the appropriate NRCS State office has assessed organization eligibility and the merits of each proposal, the NRCS State conservationist shall determine whether the farmland is eligible for financial assistance from FPP. NRCS will use the LESA system or a similar land evaluation system to evaluate the land and rank parcels.

Ranking Considerations

NRCS will only consider enrolling eligible land in the program that is of sufficient size and has boundaries that allow for efficient management of the area. The land must have access to markets for its products and an infrastructure appropriate for agricultural production. NRCS will not enroll land in FPP that is owned in fee title by an agency of the United States, or land that is already subject to an easement or deed restriction that limits the conversion of the land to nonagricultural use. NRCS will not enroll otherwise eligible lands if NRCS determines that the protection provided by the FPP would not be effective because of on-site or off-site conditions. For example, a proposal may nominate an agricultural parcel surrounded by a developed area. In addition, NRCS may learn that the local government's long-term plan or zoning regulations earmark the parcel for future development. In light of the parcel's isolation from other farms and the local government's position, expressed in either its land use plan or zoning, NRCS may determine that the use of FPP funds is not appropriate.

NRCS will place a priority on acquiring easements or other interests in lands that provide permanent protection from conversion to nonagricultural use. NRCS will place a higher priority on easements acquired by entities that have extensive experience in managing easements. NRCS will place a higher priority on lands and locations that help create a large tract of protected area for viable agricultural production. NRCS will place a higher priority on lands and locations that link to other Federal, tribal, State, local, or non-governmental organization efforts with complementary farmland protection objectives. NRCS may place a higher priority on lands that provide special social, economic, and environmental benefits to the region. A higher priority may be given to certain geographic regions where the enrollment of particular lands may help achieve national, State, and regional goals and objectives, or enhance existing government or private conservation projects.

Cooperative Agreements

The CCC will use a cooperative agreement with a selected eligible entity as the mechanism for participation in FPP. The cooperative agreement will address, among other things:

(1) The interests in land to be acquired, including the form of the easements to be used and terms and conditions;

(2) The management and enforcement of the rights acquired;

(3) The role of NRCS;

(4) The responsibilities of the easement manager on lands acquired with the assistance of FPP; and

(5) Other requirements deemed necessary by the CCC to protect the interests of the United States.

The cooperative agreement will also include an attachment listing the pending offers accepted in FPP, landowners' names, addresses, location map(s), and other relevant information.

Signed in Washington, DC, on January 16, 2001.

Danny D. Sells,

Deputy Vice President, Commodity Credit Corporation and Associate Chief, Natural Resources Conservation Service.

NRCS State Conservationists

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[FR Doc. 01–1759 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Forest Service

Basin Creek Mine Final Water Treatment System proposal, Beaverhead-Deerlodge National Forest, Jefferson County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement to document the analysis and disclose the environmental impacts of a proposed action to develop a final water treatment system at the inactive Basin Creek Mine. The mine site is located on the Continental Divide about 30 miles southwest of Helena, Montana.

The proposed action would finalize the reclamation of the closed mine by defining a long-term water treatment system to treat effluent coming from the reclaimed leach pad (known as Leach Pad 3) on National Forest System lands. The effluent needs to be treated in perpetuity to ensure that any residual contaminants (cyanide or heavy metals) originating from the reclaimed leach pad do not degrade water quality. The decision to be made is to determine the type of final water treatment system that will be developed.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than January 31, 2001.

ADDRESSES: The responsible official is Forest Supervisor Janette Kaiser, Beaverhead-Deerlodge National Forest, Dillon, Montana. To facilitate the analysis of public comments, send written comments to District Ranger Terry Sexton, Jefferson Ranger District, 3 Whitetail Road, Whitehall, MT 59759. Comments may be electronically submitted to tsexton@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Terry Sexton, District Ranger, at the above address, or phone (406) 287–3223 or 1–800–433–9206, or by email to tsexton@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Basin Creek Mine is an inactive open pit heap leach gold mine. The site contains the headwaters of the municipal watersheds for the city of Helena (Monitor Creek) and the town of Basin (Basin Creek). Active mining operations were most recently conducted from 1988 through 1990 on patented land belonging to Pegasus Gold Corporation and National Forest System lands administered by the Beaverhead-Deerlodge National Forest. Final reclamation and closure of the site began in 1994 and is scheduled for completion in the fall of 2001. The State of Montana Department of Environmental Quality will be preparing a separate document to analyze the effects of a proposed action to develop final water treatment systems for two other sources of effluent located on private land at the mine site. Discharges from the water treatment systems will require a National Pollutant Discharge Elimination System (NPDES) permit; a federal permit issued by the Corp of Engineers.

The Forest Service, Environmental Protection Agency, and the State of Montana are cooperating agencies for this proposal.

The project area is located in Township 8N, Range 6W, Sections 25 and 26. The scope of this proposal is limited to developing a final long-term water treatment system for the effluent originating from Leach Pad 3.

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues. A scoping notice describing the proposal will be mailed to those who request information on mining activities on the Beaverhead-Deerlodge National Forest. There are no scoping meetings scheduled.

Preliminary issues identified by the Forest Service include effects to water quality, and maintenance and effective life of the water treatment system. The analysis will consider all reasonably foreseeable activities. The

interdisciplinary team has not yet identified any preliminary alternatives to the proposed action. Alternatives will be developed based on the key issues identified after scoping.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS period.

During the scoping process, the Forest Service is seeking additional information and comments from individuals or organization who may be interested in or affected by the proposed action, and Federal, State and local agencies. The Forest Service invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in March, 2001. The final EIS is scheduled for completion in May, 2001.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important the those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: December 18, 2000.

Janette S. Kaiser,

Forest Supervisor.

[FR Doc. 01–1818 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of renewal at USDA.

SUMMARY: The U.S. Department of Agriculture (USDA) has renewed the charter for the Advisory Committee for Agriculture Statistics. Effective October 1, 1996, responsibility for the census of agriculture program was transferred to the National Agricultural Statistics Service (NASS) at USDA from the Bureau of the Census, U.S. Department of Commerce. Effective February 2, 1997, NASS also received the transferred program positions and staff from the Bureau of the Census, U.S. Department of Commerce. Responsibility for the Advisory Committee on Agriculture Statistics, which is a discretionary committee, was transferred, along with its allocated slot, to USDA with the census of agriculture program.

The Advisory Committee on Agriculture Statistics has provided input and direction to the census of agriculture program since the committee was first established on July 16, 1962. It has been particularly critical to have the committee as a valuable resource to USDA during the transfer of the census from the U.S. Department of Commerce.

The purpose of the committee is to make recommendations on census of agriculture operations including questionnaire design and content, publicity, publication plans, and data dissemination.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact R. Ronald Bosecker, Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 4117 South Building, Washington, DC 20250–2000, (202) 720–2707.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix), notice is hereby given that the Secretary of Agriculture has renewed the charter for the Advisory Committee on Agriculture Statistics, hereafter referred to as Committee. The purpose of the Committee is to advise the Secretary of Agriculture on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest and relevant to the duties of USDA. No other advisory committee or agency of USDA is performing the tasks that will be assigned to the Committee.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Representatives of the Bureau of the Census, U.S. Department of Commerce, and Economic Research Service, USDA, serve as ex-officio members of the Committee.

The committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging developments and issues in the food and fiber sector that can affect agriculture statistics activities.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Paul W. Fiddick,

Assistant Secretary for Administration.

[FR Doc. 01–1267 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service; Notice of a Finding of No Significant Impact

Hickory Creek Watershed; Coffee, Grundy, Warren Counties; Tennessee

AGENCY: Natural Resources Conservation Service; USDA.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hickory Creek Watershed; Coffee, Grundy, and Warren Counties; Tennessee.

FOR FURTHER INFORMATION CONTACT: James W. Ford, State Conservationist, Natural Resources Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone number (615) 277–2531.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James W. Ford, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

Hickory Creek Watershed, Tennessee
Notice of a Finding of No Significant Impact

The project purpose is watershed protection. The planned works of improvement include installation of animal waste management systems and measures to reduce erosion and sedimentation. Federal financial assistance will be provided to accelerate financial and technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting James W. Ford.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

Dated: January 3, 2001.

James W. Ford,

State Conservationist.

[FR Doc. 01–1722 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Michigan

AGENCY: Natural Resources Conservation Service (NRCS) in Michigan, US Department of Agriculture.

ACTION: Notice of availability of proposed changes in Michigan NRCS FOTG, Section IV for review and comment.

SUMMARY: It is the intention of NRCS in Michigan to issue revised conservation practice standards in Section IV of the FOTG. The revised standards include:

Herbaceous Wind Barriers (422A)
Riparian Forest Buffer (391)
Cover Crop (340)
Prescribed Grazing (528A)
Wetland Wildlife Habitat Management (644)
Shallow Water Management For Wildlife (646)
Windbreak/Shelterbelt Establishment (380)
Field Border (386)
Early Successional Habitat Development/Management (647)
Stream Crossing and Livestock Access (728)
Agrichemical Containment Facility (702)
Manure Transfer (634)
Closure of Waste Impoundments (360)
Grassed Waterway (412)

DATES: Comments will be received on or before February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kevin Wickey, Assistant State Conservationist for Technology, Natural Resources Conservation Service, 3001 Coolidge Road, Suite 250, E. Lansing, MI 48823. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *Kevin.Wickey@mi.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Wickey 517–324–5279.

SUPPLEMENTARY INFORMATION: Section 393 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Michigan will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Michigan regarding disposition of those comments and a final determination of change will be made.

Dated: December 22, 2000.

Ronald C. Williams,

State Conservationist, E. Lansing, Michigan.

[FR Doc. 01–1838 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–16–P 4

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

Comments must be received on or before: February 19, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. The following service has been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Janitorial/Custodial, Basewide, Little Rock Air Force Base, Arkansas, NPA: Pathfinder Schools, Inc., Jacksonville, Arkansas.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following services have been proposed for deletion from the Procurement List:

Services

Grounds Maintenance, Rogue River National Forest, J. Herbert Stone Nursery, 2606 Old Stage Road, Central Point, Oregon.

Support Activities for Forestry (TSI), Crane Division, Naval Surface Warfare Center, Crane, Indiana.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 01–1646 Filed 1–19–01; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: February 19, 2001.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 13, November 17 and November 24, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 67714, 69499 and 70459) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Sorbents, Chemical and Oil
4235–01–441–0246
4235–01–441–0248
4235–01–451–8744
4235–01–453–5159
4235–01–456–8571
4235–01–456–8575
4235–01–456–8858
4235–01–456–8862
4235–01–456–9893
4235–01–456–9899
4235–01–457–0005
4235–01–457–0031
4235–01–457–0421
4235–01–457–0431
4235–01–457–0518
4235–01–457–0658
4235–01–457–0663
4235–01–457–0677
4235–01–457–0678

Services

Food Service
Kirtland Air Force Base, New Mexico

Grounds Maintenance
Department of Energy, Nevada Support Facility, 232 Energy Way, North Las Vegas, Nevada

Janitorial/Custodial
Depot Maintenance Industrial Fund, Tinker Air Force Base, Oklahoma

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. Accordingly, the following commodities are hereby deleted from the Procurement List:

Commodities

Arming Adapter, Self Adjusting
1325–01–158–8635
1325–01–159–8083
Air Freshener Deodorant, General Purpose
6840–00–932–4692
Envelope, Wallet
7530–00–281–4844
7530–00–281–4846

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 01–1647 Filed 1–19–01; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Meeting: With the Community College of the Air Force Board of Visitors To Review and Discuss Academic Policies and Issues Relative to the Operation of the College

AGENCY: Department of the Air Force, DOD.

ACTION: Notice of meeting.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact First Lieutenant Matthew M. Groleau, Designated Federal Officer for the Board, at the address below no later than 4:00 p.m. on April 1, 2001. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. A minimum of 35 copies of the presentation materials must be given to First Lieutenant Matt Groleau no later than 3 days prior to the time of the board meeting for distribution. Visual aids must be submitted to First Lieutenant Matt Groleau on a 3½'' computer disk in Microsoft PowerPoint format no later than 4:00 p.m. on April 1, 2001 to allow sufficient time for virus scanning and formatting of the slides.

DATES: The meeting will be held on Wednesday, May 9, 2001 at 1:00 p.m. on the First Floor Conference Room, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112.

FOR FURTHER INFORMATION CONTACT: First Lieutenant Matt Groleau, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama 36112–6613, (334) 953–7322, or through electronic mail at matthew.groleau@maxwell.af.mil.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 01–1570 Filed 1–19–01; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF COMMERCE

Census Bureau

The Census 2000 Count Question Resolution Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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)).

DATES: Written comments must be submitted on or before March 23, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information and instructions should be directed to Robert A. Rinaldi, Assistant Division Chief, Decennial Management Division, U.S. Census Bureau, SFC–2, Room 2002, Washington, DC 20233–001. Telephone: 301–457–8226; fax: 301–457–8328; or e-mail: *Count.Question.Resolution@census.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice provides information concerning the Census 2000 Count Question Resolution (CQR) program that will be implemented to respond to challenges to the Census 2000 housing unit counts and group quarters counts received from local and tribal governmental entities in the U.S. and Puerto Rico. This program will become effective on June 30, 2001, and will end on September 30, 2003.

After the release of Census 2000 Public Law 94–171 redistricting data containing population counts and the Demographic Profiles and Summary File 1 (SF1) that contain the number of housing units and group quarters population counts, some governmental entities may want to challenge these official Census 2000 counts.

Challenges to the overseas counts of persons in the military and Federal civilian personnel stationed overseas and their dependents living with them will not be accepted. These overseas counts are obtained using administrative records and will be used solely for reapportioning seats in the U.S. House of Representatives and do not provide the substate geographic information required for the CQR program.

No additional data will be collected as part of the CQR program. We will only use those data that have already been collected. The Census Bureau will respond to all questions and will notify all affected governmental entities of any corrections to their official counts as a result of CQR. All challenges should be sent to the Census Bureau's headquarters. (The specific mailing

address and a glossary of terms are provided in the Exhibit at the end of this notice's Method of Collection section.)

Background

The Census Bureau implemented the Local Update of Census Addresses (LUCA) program for Census 2000. Participating local and tribal governments were given the opportunity to review and update the Census Bureau's address list before it was used for the actual census enumeration. In cases where the local or tribal government and the Census Bureau could not agree on the housing unit address list, the governmental unit could use an appeal process administered by the Census Address List Appeals Office. The Census Bureau also used the LUCA Special Places program to involve local and tribal governments in helping to identify special places, such as college dormitories, nursing homes and other types of group living arrangements.

In addition to LUCA, governmental units with city-style address areas had another opportunity to update the Census 2000 address list for the New Construction program. We also conducted the Boundary and Validation program, in which we provided local officials with maps that showed boundaries of their jurisdiction and asked them to make corrections, if necessary.

The Census Bureau had a comprehensive program to improve the quality of the housing unit counts. A number of extensive operations afforded other opportunities for additions, corrections, and deletions of census addresses and corrections of population counts. Between May and August 2000, the Coverage Edit Follow-up operation resolved population count discrepancies and obtained additional information on households with more than six persons. The Coverage Improvement Follow-up (CIFU) operation (June–August 2000) enumerated housing units that were inaccurately classified as vacant or nonexistent in an earlier census operation. It also enumerated added housing units discovered in an earlier census operation; housing units added through the LUCA 98 and 99 appeals process; new addresses from periodic postal updates; blank or missing mail return forms; and addresses provided in the New Construction update by local and tribal governments.

During July and August 2000, the Residual Nonresponse Follow-up operation completed questionnaires for housing units where identification numbers existed for forms that were checked out of the Local Census Office, were not included in CIFU, and did not have census data captured. The Field Verification operation (July–August 2000) verified specific addresses that did not match the Decennial Master Address File. Another operation, Population Unknown Supplementary (July–August 2000), was conducted to determine the number of people in housing units that the Nonresponse Follow-up operation (April–June 2000) had identified as occupied, but the number of occupants were unknown.

Data collection for Census 2000 ended in the Local Census Offices on or before August 30, 2000. This schedule was needed to allow the Census Bureau time to produce the state level apportionment counts by December 31, 2000, as required by law.

The Census Bureau also conducted the Accuracy and Coverage Evaluation operation that includes a coverage measurement survey that is expected to determine and correct for the number of people and housing units missed or erroneously included in Census 2000. This survey, a nationwide sample survey of about 314,000 housing units, was conducted by the Census Bureau independently of Census 2000. All enumeration activities, as well as person interviewing follow-up, were completed by late November 2000.

Although many local and tribal governments participated in the LUCA and New Construction programs and the Census Bureau conducted an extensive quality improvement program, the Census Bureau still expects to receive challenges after it releases the official Census 2000 housing unit and group quarters population counts contained in the Demographic Profiles, which are scheduled for release between June and September 2001. The CQR start date of June 30, 2001, also is coordinated with the release of the Summary File 1 (SF1) on a state-by-state basis between June and September 2001. The SF1 will contain block-level data on the number of housing units. It also will show group quarters population counts by blocks.

The Bureau of the Census (Census Bureau) must be contacted directly by officials of local and tribal governments in order to initiate the challenge process. However, the Census Bureau also will accept challenges from county clerks, city planners, local planning board representatives, and state legislative representatives with redistricting functions within each state and state equivalents who are acting on the behalf of a local or tribal jurisdiction.

Types of Corrections That Will Be Considered for the Census 2000 CQR Program

Corrections for three types of challenges will be made as a result of the Census 2000 CQR program. (For acceptable documentation to initiate such challenges, refer to the Method of Collection section, ''Criteria for Acceptable Documentation Necessary to Initiate the Census 2000 CQR Process.'')

(1) *Boundary corrections*—Census 2000 respects the proper alignment of the jurisdictional boundaries of functioning governmental units as legally in effect on January 1, 2000. The Census Bureau needs to ensure that the geographic assignment information provided does not, in fact, reflect boundary changes made after January 1, 2000. Problems, such as the inaccurate reporting of jurisdictional boundaries and the inaccurate recording of such boundaries by the Census Bureau, will be addressed by the CQR program. The boundaries of other geographic and statistical areas, such as census designated places, census tracts, voting districts, school districts, and the like are not in the scope of the Census 2000 CQR program.

(2) *Geocoding corrections*—placement of living quarters and associated population within the correct boundaries, census blocks, and the like. Even if the CQR process does not result in a change to the total count for a local or tribal jurisdiction, we will send a letter to the local or tribal government official when the Census Bureau moves group quarters or housing units to different blocks within the jurisdiction.

(3) *Coverage corrections*—specific living quarters and persons residing therein that were identified during the Census 2000 process but erroneously included or excluded due to processing errors; these corrections could be additions or deletions.

Changes That Result in Corrections

The corrected CQR counts that are issued are based on the housing unit and population counts as of April 1, 2000. The new official census counts may be used by the governmental entities for all programs requiring official Census 2000 data. The Census Bureau will not make corrections to the data concerning the characteristics of the population and housing inventory. The corrected counts will be reflected in the Census Bureau's decennial file modified for use in making postcensal estimates that will be released on a flow basis beginning in December 2002. An inventory of corrections also will be available on the *American FactFinder*

Internet Data Access System (errata) and updated periodically. The base files for the census will remain unrevised so that none of the standard Census 2000 data products will reflect the corrections.

Challenges That Do Not Result in Corrections

When a local or tribal government provides evidence that the Census Bureau missed housing units or group quarters that existed on April 1, 2000, but the CQR research and Census 2000 records show that all of the Census Bureau's boundary information, geocoding, and processing were correctly implemented, the Census Bureau will respond by sending a letter to the official or his/her representative stating that the Census Bureau will maintain the documentation for consideration in the context of address list updating activities over the decade.

Internal Census Bureau Review

Changes to the boundaries or counts for a jurisdiction also may result from Census Bureau initiated research and review of census files. The Census Bureau reviews Census 2000 data by checking for data reasonableness, internal and intra-product consistency, and consistency with historical and external data sources. This review process begins with an analysis by Census Bureau staff, the Federal-State Cooperative Program for Population Estimates and others. These reviewers identify, address, and/or explain issues or problems related to coverage, content, processing, and geocoding. Unresolved potential problems will be forwarded to the CQR staff for additional analysis. Changes made as result of this internal review and/or research will be incorporated into the CQR process and documented in the same way that changes based on jurisdictional CQR challenges will be documented. In cases where changes to the housing unit and/or population counts are made, new official counts will be issued to the affected jurisdictions.

II. Method of Collection

Criteria for Acceptable Documentation Necessary To Initiate the Census 2000 CQR Process

The Census Bureau will require documentation before committing resources to investigate concerns raised by local and tribal officials or their representatives about boundary and geographic assignment errors or the accuracy of the census housing unit or group quarters population counts. In general, when submitting a challenge, governmental entities must:

- Specify whether the challenge disputes the location of a governmental unit boundary or the number of housing units and/or group quarters population counts in one or more tabulation blocks.
- For boundary disputes, indicate on a map the location of the governmental unit boundary in dispute; that is, it must be shown where the Census Bureau incorrectly depicts the boundary and show the correct boundary legally in effect as of January 1, 2000. (For types of maps that can be used, refer to the section ''Types of Acceptable Paper Maps.'')
- For housing unit challenges, identify the specific Census 2000 tabulation block that is being contested and a list of the addresses of all housing units in that block on April 1, 2000. (See the section ''Challenge Criteria: Housing Unit Count.'')
- For group quarters (see Census Bureau group quarters definition listed under ''Definition of Key Terms'') challenges, provide the name of the group quarters and evidence, e.g., a listing of patients residing in the XYZ Nursing Home as of April 1, 2000, that supports the number of persons residing there on April 1, 2000, as necessary, and show the specific Census 2000 tabulation block in which the group quarters population is being contested.
- Provide electronic or paper versions of documentation to support the challenge.

Boundary Challenge Criteria

All governmental unit boundary challenges must be based on boundaries that were legally in effect on January 1, 2000. The Census Bureau will compare the maps and appropriate supporting documentation submitted by the challenging entity with the information used by the Census Bureau to depict the boundaries for Census 2000.

Maps submitted by local and tribal governments must show the correct location of the boundary and the portion of the boundary that the Census Bureau depicted incorrectly, including the Census 2000 tabulation block numbers associated with the boundary. The local or tribal government also should provide the Census Bureau with a list of addresses in affected tabulation blocks, indicating their location in relationship to the boundary requiring correction.

For boundary changes affected by legal actions not recorded by the Census Bureau, local or tribal governments must submit the effective date and the ordinance number or law that effectuated the change in boundaries, provide evidence that the state certifying official has approved the boundary change, and provide a statement that the boundary is not under litigation. The change also must be certified by a local official. Regardless of whether the Census Bureau changes boundaries or does not change boundaries as a result of the CQR evidence and the Census Bureau's research, the Census Bureau will notify the complainant and any affected adjacent governmental entity(es) of the results.

Types of Acceptable Paper Maps

- Paper Census 2000 Public Law 94–171 County Block Maps—These maps will accompany the Redistricting Data Summary Files.
- Paper Census 2000 Redistricting Block Maps for Washington, DC.
- Paper Census 2000 Redistricting Municipio Block Maps for Puerto Rico—These maps will accompany the Puerto Rico Redistricting Data File.
- Paper Census 2000 Block Maps—These maps will be provided to local and tribal jurisdictions and will show tabulation block numbers. They are a companion map for the Demographic Profiles that will contain information on population totals, including group quarters and selected population and housing characteristics.
- Paper Maps based on the 2000 TIGER/Line® File—These maps are generated by local or tribal governments based on information from the Census Bureau's 2000 TIGER/Line® files using commercial geographic information systems.
- Other Paper Maps Showing Census Bureau 2000 Tabulation Block Numbers and Boundaries—These maps should show geographic boundaries as of January 1, 2000, that identify census tabulation blocks, census tracts, legal and statistical entities and state boundaries; maps depicting data collection blocks cannot be used. In general, maps should be comparable to Census 2000 maps.

Challenge Criteria

Housing Unit Count

Supporting evidence that specifically reflects the validity of any address list source must reflect residential addresses that existed as viable living quarters on April 1, 2000. Challenges to housing unit counts must specify the tabulation block(s) for which the counts are being challenged.

SF1 can be used to obtain tabulation block housing unit counts. Complainants must provide a complete address list for all units that should be included in each contested block. (Refer to the section ''Types of Address Lists.'')

Local or tribal officials must certify that the addresses on their lists existed

and could be lived in on April 1, 2000. See Census Bureau ''housing unit'' definition listed under ''Definitions of Key Terms.''

Group Quarters Population Count

Supporting evidence that specifically reflects the validity of any address list source should be dated no later than April 1, 2000. Challenges to group quarters population counts must specify the tabulation block(s) for which the counts are being challenged. A group quarters is defined as a place where people live or stay other than the usual house, apartment, or mobile home. Two general types of group quarters are recognized: institutional (for example, nursing homes, mental hospitals or wards, hospital or wards for chronically ill patients, hospices, and prison wards) and noninstitutional (for example, college or university dormitories, military barracks, group homes, shelters, missions, and flophouses). Group quarters may have housing units on the premises for staff and/or guests.

SF1 can be used to obtain tabulation block group quarters population counts. Complainants must provide a complete address list (refer to the section ''Types of Address Lists'') for all group quarters units that should be included in each contested block. (For the definition of group quarters, see the section ''Definitions of Key Terms.'')

The local or tribal official should certify that the addresses on their lists existed and could be lived in on April 1, 2000.

Types of Address Lists

• City-Style Address Lists—Must contain city-style addresses (house number, street name, post office name, state, and ZIP Code) organized by Census 2000 tabulation block within census tract. Housing unit identifiers in multi-unit buildings (such as apartment numbers) must be included, if applicable.

• Non-City-Style Address Lists—Non-city-style addresses must be keyed to the local or tribal government's map-spotted maps, that is, maps that show the exact location of the housing unit. The list should be focused on the specific area and/ or addresses where the problem exists. All housing units in the disputed block must be map spotted and a description of the housing unit and location must be supplied. The following is an example of a map-spotted address and housing unit description: Map Spot 4567–01, Derby Road, 2-story house on left with red brick chimney, 6 houses from the intersection of Highways 12 and 19, Anytown, Georgia 10020.

Group Quarters Information

Provide the name, address, and telephone number for the administrative office of the facility (special place and group quarters) as of April 1, 2000. In addition, provide the census tract and tabulation block number for the location of the group quarters.

Statistical Corrections

The data produced by the Census Bureau may be corrected by applying statistical techniques to the data files. Challenges to the Census Bureau will be investigated based on the data without the statistical correction.

Census Bureau Actions

The Census Bureau will investigate challenges to determine whether information about the existence of a housing unit or occupied group quarters on April 1, 2000, was identified but does not appear in the final census files due to an error in processing the information. The Census Bureau will not collect new information.

Definitions of Key Terms

American FactFinder—The generalized electronic system for access and dissemination of much of Census Bureau data. The system is available through the Internet and offers prepackaged data products and the ability to build custom products. The system serves as the vehicle for accessing and disseminating data from Census 2000 (as well as the 1997 Economic Censuses and the American Community Survey).

Census Block—A geographic area bounded on all sides by visible or nonvisible features shown on census maps. A block is the smallest geographic entity for which the Census Bureau collects and tabulates decennial census information. See also block boundary, block number, collection block, statistical entity, and tabulation block.

Census Tract—Small, relatively permanent statistical subdivisions of counties delineated by local committees of census data users in accordance with Census Bureau guidelines for the purpose of collecting and presenting decennial census data. These neighborhoods contain between 1,000 and 8,000 people, typically approximately 1,700 housing units and 4,000 people.

Census Designated Place—A geographically defined statistical entity delineated for each decennial census according to Census Bureau guidelines comprising a densely settled concentration of population that is not incorporated or established by law but is locally recognized and identified by a name.

County—A type of governmental unit that is the primary legal subdivision of every state except Alaska and Louisiana (which have boroughs and parishes, respectively).

Demographic Profile—A one-page table containing data at the place level that shows information on total population, sex, age, race, Hispanic or Latino origin, household relationship, group quarters population, household type, housing occupancy, and housing tenure.

Group quarters—A place where people live or stay other than the usual house, apartment, or mobile home. The Census Bureau recognizes two general types of group quarters: institutional (for example, nursing homes, mental hospitals or wards, hospital or wards for chronically ill patients, hospices, and prison wards) and noninstitutional (for example, college or university dormitories, military barracks, group homes, shelters, missions, and flophouses). Special places may have housing units on the premises for staff or guests.

Housing unit—A house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied as a separate living quarters, or, if vacant, is intended for occupancy as a separate living quarters. A housing unit is defined as a living quarters that is closed to the elements and has all exterior windows and doors installed and final usable floors in place. For vacant units, the criteria of separateness and direct access are applied to the intended occupants, whenever possible. If that information cannot be obtained, the criteria are applied to the previous occupants.

Local Census Office—A temporary Census Bureau office established for Census 2000 data collection purposes. These offices managed address listing field work, conducted local recruiting, and created a local presence. They were called ''district office'' in previous censuses.

Municipio—A primary legal subdivision of Puerto Rico (synonymous to a county).

Overseas counts—Counts of military and Federal civilian personnel stationed overseas and their dependents living with them.

Postcensal Estimates—Population estimates for the years following the last published decennial census. Existing data series, such as births, deaths, Federal tax returns, medicare enrollment, and immigration and housing unit information are used to update the decennial census counts

during the estimating process. These estimates are used in Federal funding allocations, monitoring recent demographic trends, and benchmarking may federally funded survey totals.

Public Law 94–171—The Federal law amending Section 141 of Title 13 directing the Secretary of Commerce (who delegates that responsibility to the Director of the Census Bureau) to provide selected decennial census data tabulations to the states by April 1 of the year following the census. These tabulations are used by the states to redefine the areas included in each Congressional District and the areas used for state and local elections, a process called redistricting.

Special Place—A place containing one or more group quarters, including hotels and campgrounds. A special place also may include housing units occupied by staff or guests.

Summary File 1—A data file that presents counts and basic cross-tabulations of information collected from all people and housing units. This information includes age, sex, race, Hispanic or Latino origin, household relationship, and whether the residence is owned or rented. Data will be available down to the block level for many tabulations, but limited to the census tract level in cases where there are concerns with disclosure. Summaries also will be included for other geographic areas, such as ZIP Code Tabulation Areas and Congressional Districts.

Exhibit—Additional Information

This section provides additional information on how the Census 2000 CQR program will operate.

1. Where Should a Governmental Unit Submit a Challenge for the Census 2000 CQR program?

Governmental units challenging the completeness or accuracy of the Census 2000 counts should submit their challenge in writing to: Count Question Resolution Program, Room 2002, SFC—2, Decennial Management Division, U.S. Census Bureau, Washington, DC 20233–0001.

2. Will the Census Bureau Make Corrections to the Census Counts Based on Information Submitted by Governmental Units?

The Census Bureau will make corrections if research indicates they are warranted. Our experience has shown that many of the questions received from the local or tribal officials do not reflect errors in census counts. Questions may result from an incorrect or incomplete understanding of the procedures used to take the census. In other instances, questions about census counts reflect a local or tribal official's reliance on different enumeration concepts, definitions, geographic assignments, and/or the currency of the information in comparison to the census. The Census Bureau's determination of whether a correction is necessary will be based on the quality and completeness of the information provided by local and tribal governmental unit representatives and the results of the Census Bureau's review of the census records.

3. Will the Census Bureau Incorporate Corrections From the CQR Process Into the Apportionment or Redistricting Data or Subsequent Data Products?

The Census Bureau will not change the apportionment counts to reflect corrections resulting from the CQR process. The apportionment counts were delivered to the President on December 28, 2000.

The Census Bureau will begin delivery of the counts required for redistricting purposes in March 2001 and will complete this delivery by the statutory deadline of April 1, 2001. The Census Bureau will not incorporate CQR corrections into the redistricting data and subsequent data products for Census 2000. This process will allow the Census Bureau to maintain consistency between data products while maintaining the schedule for timely release of the data. However, the Census Bureau will issue a revised official Census 2000 population and housing unit counts for the affected governmental entity(es), maintain a list of CQR corrected areas on the *American Factfinder,* and will incorporate any corrections into its Postcensal Estimates program beginning in December 2002.

III. Data

OMB Number: Not available.

Form Number: None.

Type of Review: Regular collection.

Affected Public: Local governmental jurisdictions in the United States and Puerto Rico.

Estimated Number of Respondents: Approximately 3,000 annually.

Estimated Time Per Response: 5.2 hours (based on an average challenge of 40 housing units).

Estimated Total Annual Burden Hours: 15,600 hours.

Estimated Total Annual Cost: $244,440.00.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, USC, Section 141.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 12, 2001.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–1564 Filed 1–19–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Randy Reyes

In the Matter of: Randy Reyes, currently incarcerated at: Wachenhut FCI, USM #05425–089, P.O. Box 17001, 1500 Cadet Road, Taft, California 93268; and with an address at: 5250 Colodny Drive, #3, Agoura Hills, California 91301–2656.

Order Denying Export Privileges

On January 14, 2000, Randy Reyes (Reyes) was convicted in the United States District Court for the Eastern District of Wisconsin of violating Section 38 of the Arms Export Control Act (22 U.S.A. 2778 (1990 & Supp. 2000)) (the AECA) and the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)) (IEEPA). Specifically, Reyes was convicted of knowingly and willfully exporting and attempting to export from the United States aircraft component parts which were designated as defense articles on the United States Munitions List without having first obtained from the Department of State a license or written authorization, and of knowingly and willfully exporting and attempting to export from the United States to Iran

through Geneva, Switzerland, aircraft component parts.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app 2401–2420 (1991 & Supp. 2000 and Pub. L. No. 106–508, November 13, 2000)) (the Act) [1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the AECA or the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2000), as amended (65 FR 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the AECA or the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall determine whether to revoke any license previously issued to such a person.

Having received notice of Reyes's conviction for violating the AECA and the IEEPA, and after providing notice and an opportunity for Reyes to make a written submission to the Bureau of Export Administration before issuing an Order denying his export privileges, as provided in section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Reyes's export privileges for a period of 10 years from the date of his conviction. The 10-year period ends on January 14, 2010. I have also decided to revoke all licenses issued pursuant to the Act in which Reyes had an interest at the time of his conviction.

Accordingly, it is hereby Ordered:

I. Until January 14, 2010, Randy Reyes, currently incarcerated at: Wachenhut FCI USM # 05425–089, P.O. Box 17001, 1500 Cadet Road, Taft, California 93268, and with an address at: 5250 Colodny Drive, #3, Agoura Hills, California 91301–2656, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Reyes by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until January 14, 2010.

VI. In accordance with Part 756 of the Regulations, Reyes may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Reyes. This Order shall be published in the **Federal Register**

Dated: January 5, 2001.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 01–1620 Filed 1–19–01; 8:45 am]

BILLING CODE 3510–DT–M

[1] During the time of the Act's lapse, (August 20, 1994 through November 12, 2000) the President, through Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 FR 48347, August 8, 2000), continued the Regulations in effect under the IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the Act.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Peter Rigolli, Also Known as Pietro Rigolli, Ian Falcon, G. Tedaldi, Rafael Heredia, and Farid H. Talab

In the Matter of: Peter Rigolli, also known as Pietro Rigolli, Ian Falcon, G. Tedaldi, Rafael Heredia, and Farid H. Talab, currently incarcerated at: Inmate #044–22082, FCI Otisville, P.O. Box 600, Otisville, New York 10963; and with an address at: 118 Northview, Dollar Des, Ormeaux, Quebec, Canada H9B3J6.

Order Denying Export Privileges

On March 27, 2000, Peter Rigolli, also known as Pietro Rigolli, Ian Falcon, G.

Tedaldi, Rafael Heredia, and Farid H. Talab (hereinafter referred to as Rigolli), was convicted in the United States District Court for the District of Connecticut of violating the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991 & Supp. 2000)) (IEEPA) and the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991 & Supp. 2000 and Pub. L. No. 106–508, November 13, 2000)) (the Act).[1] Specifically, Rigolli was convicted of knowingly and willfully exporting and causing to be exported from the United States to Canada and Switzerland, and then re-exported to Iran, aircraft parts without having first obtained a validated export license, and of knowingly and willfully making false, fictitious, and fraudulent statements and representations to effect the export of aircraft engine parts by representing that the ultimate destination for those parts was the country of Singapore, which statement he knew to be untrue.

Section 11(h) of the Act provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the IEEPA or the Act, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2000), as amended (65 FR 14862, March 20, 2000)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA or the Act, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person's export privileges for a period of up to 10 years from the date of conviction and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Rigolli's conviction for violating the IEEPA and the Act, and after providing notice and an opportunity for Rigolli to make a written submission to the Bureau of Export Administration before issuing an Order denying his export privileges, as provided in section 766.25 of the Regulations, I, following consultations with the Director, Office of Export Enforcement, have decided to deny Rigolli's export privileges for a period of 10 years from the date of his conviction. The 10-year period ends on March 27, 2010. I have also decided to revoke all licenses issued pursuant to the Act in which Rigolli had an interest at the time of his conviction.

Accordingly, it is hereby *Ordered:*

I. Until March 27, 2010, Peter Rigolli, also known as Pietro Rigolli, Ian Falcon, G. Tedaldi, Rafael Heredia, and Farid H. Talab, currently incarcerated at: Inmate #044–22082, FCI Otisville, P.O. Box 600, Otisville, New York 10963; and with an address at: 118 Northview, Dollar Des, Ormeaux, Quebec, Canada H9B3J6, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Rigolli by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until March 27, 2010.

VI. In accordance with Part 756 of the Regulations, Rigolli may file an appeal from this Order with the Under Secretary for Export Administration. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to Rigolli. This Order shall be published in the **Federal Register.**

Dated: January 5, 2001.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 01–1619 Filed 1–19–01; 8:45am]

BILLING CODE 3510–DT–M

[1] During the time of the Act's lapse, (August 20, 1994 through November 12, 2000) the President, through Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), which had been extended by successive Presidential Notices, the most recent being that of August 3, 2000 (65 FR 48347, August 8, 2000), continued the Regulations in effect under the IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the Act.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 71–2000]

Foreign-Trade Zone 50, Long Beach, California, Proposed Foreign-Trade Subzone, ARCO Products Company (Oil Refinery Complex), Long Beach, California, Area; Correction

The **Federal Register** notice (65 FR 82320, 12/28/00) describing the application submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Long Beach, grantee of FTZ 50, requesting special-purpose subzone status for the oil refinery complex of Atlantic Richfield Company (ARCO), in the Long Beach, California, area, is corrected as follows: in paragraph 2, the description of Sites 5, 6, and 7 should be as follows:

''*Site 5* (5 tanks, 1.1 million barrel capacity, 15 acres)'';

''*Site 6* (13 tanks, 3.6 million barrel capacity, 75 acres)'';

''*Site 7* (20 tanks, 1.1 million barrel capacity, 20 acres)''.

Dated: January 11, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–1685 Filed 1–19–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1138]

Grant of Authority for Subzone Status Alliant Aerospace Composite Structures Company (Space Launch Vehicle Composite Structures) Iuka, Mississippi

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Vicksburg-Jackson Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 158, has made application for authority to establish special-purpose subzone status at the space launch vehicle composite structure manufacturing facility of Alliant Aerospace Composite Structures Company (Inc.), located in Iuka, Mississippi (FTZ Docket 25–2000, filed 6–2–00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 36887, 6–12–00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the space launch vehicle composite structure manufacturing facility of Alliant Aerospace Composite Structures Company (Inc.), located in Iuka, Mississippi (Subzone 158C), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of January 2001.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 01–1683 Filed 1–19–01; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1136]

Grant of Authority for Subzone Status; Sunoco, Inc. (Oil Refinery Complex), Toledo, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, has made application to the Board for authority to establish special-purpose subzones status at the oil refinery complex of Sunoco, Inc., located in Toledo, Ohio (FTZ Docket 17–2000, filed 5/3/00);

Whereas, notice inviting pubic comment was given in the **Federal Register** (65 FR 31141, 5/16/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby grants authority for subzone status at the oil refinery complex of Sunoco, Inc., located in Toledo, Ohio (Subzone 8H), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on inputs covered under HTSUS Subheadings #2710.00.05–#2710.00.10, #2710.00.25, and #2710.00.4510 which are used in the production of:

—Petrochemical feedstocks (examiner's report, Appendix ''C'');

—Products for export; and,

—Products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 5th day of January 2001.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Appendix C

STANDARD APPENDIX FOR OIL REFINERY SUBZONES[1] PETROCHEMICAL FEEDSTOCKS/REFINERY BY-PRODUCTS—NPF STATUS

	HTSUS No.	Duty rate
Benzene	2707.10.00	Free.
Toluene	2707.20.00	Free.
Xylenes	2707.30.00	Free.
Naphthalene	2707.40.00	Free.
Other Aromatic Hydrocarbon Mixtures	2707.50.00	Free.
Carbon Black Oil	2707.99.50	Free.
	2803.00.00	Free.
Distillates/Fuel Oils	2710.00.05	5.25¢/bbl.
	2710.00.10	10.5¢/bbl.
Kerosene	2710.00.20	10.5¢/bbl.
Naphthas (except motor fuel & blendstocks)	2710.00.25	10.5¢/bbl.
Mixtures of Hydrocarbons, not elsewhere specified	2710.00.45	10.5¢/bbl.
Liquified Natural Gas	2711.11.00	Free.
Propane	2711.12.00	Free.
Butanes	2711.13.00	Free.
Ethylene, Propylene, Butylene, Butadiene	2711.14.00	Free.
Ethane, other Liquified Petroleum Gases	2711.19.00	Free.
Natural Gas, gaseous	2711.21.00	Free.
Gaseous Propane, Butane, other Petroleum Gases	2711.29.00	Free.
Paraffin Waxes & Petroleum Jelly	2712.10.00–2712.90.20	Free.
Petroleum Coke and Asphalt	2713.11.00–2713.90.00	Free.
	2714.10.00–2715.00.00	Free.
Sulfur	2802.00.00	Free.
	2503.00.00	Free.
Sulfuric Acid	2807.00.00	Free.
Acyclic Hydrocarbons:		
Saturated		
Ethane and Butane	2901.10.10	Free.
n-Pentane and Isopentane	2901.10.30	Free.
Other	2901.10.40	Free.
Unsaturated		
Ethylene, Propylene, Butylene	2901.21.00–2901.23.00	Free.
Buta-1-3-diene	2901.24.10	Free.
Dicyclopentadiene	2902.19.0010	Free.
Cyclic Hydrocarbons:		
Benzene, Toluene and Xylenes	2902.20.00–2902.44.00	Free.
Cumene	2902.70.00	Free.
Pseudocumene	2902.90.10	Free.

[1] This is a comprehensive list of finished products that may be produced with NPF inputs at the subzones designated in Appendix A (Fed. Reg. Notice of 9/2/99, 64 FR 48140) based on previous FTZ Board authorizations for oil refineries.

[FR Doc. 01–1681 Filed 1–19–01; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1137]

Grant of Authority for Subzone Status; Conoco, Inc., (Oil Refinery Complex), Ponca City, Oklahoma

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port Authority of the Greater Oklahoma City Area, grantee of Foreign-Trade Zone 106, has made application to the Board for authority to establish special-purpose subzone status at the oil refinery complex of Conoco, Inc., located in Ponca City, Oklahoma (FTZ Docket 18–2000, filed 5/3/00);

Whereas notice inviting public comment was given in the **Federal Register** (65 FR 31141, 5/16/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now therefore, the Board hereby grants authority for subzone status at the oil refinery complex of Conoco, Inc., located in Ponca City, Oklahoma (Subzone 160E), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the

petrochemical complex shall be subject to the applicable duty rate.

2. Privileged for foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on inputs covered under HTSUS Subheadings #2710.00.05—#2710.00.10 #2710.00.25, and #2710.00.4510 which are used in the production of:

—Petrochemical feedstocks (examiner's report, Appendix ''C'')
—Products for export; and,
—Products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 5th day of January 2001.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

STANDARD APPENDIX FOR OIL REFINERY SUBZONES [1] PETROCHEMICAL FEEDSTOCKS/REFINERY BY-PRODUCTS NPF STATUS

	HTSUS No.	Duty rate
Benzene	2707.10.00	Free.
Toluene	2707.20.00	Free.
Xylenes	2707.30.00	Free.
Napthalene	2707.40.00	Free.
Other Aromatic Hydrocarbon Mixtures	2707.50.00	Free.
Carbon Black Oil	2707.99.50	Free.
	2803.00.00	Free.
Distillates/Fuel Oils	2710.00.05	5.25¢/bbl.
	2710.00.10	10.5¢/bbl.
Kerosene	2710.00.20	10.5¢/bbl.
Naphthas (except motor fuel & blendstocks)	2710.00.25	10.5¢/bbl.
Mixtures of Hydrocarbons, not elsewhere specified	2710.00.45	10.5¢/bbl.
Liquified Natural Gas	2711.11.00	Free.
Propane	2711.12.00	Free.
Butanes	2711.13.00	Free.
Ethylene, Propylene, Butylene, Butadiene	2711.14.00	Free.
Ethane, other Liquified Petroleum Gases	2711.19.00	Free.
Natural Gas, gaseous	2711.21.000	Free.
Gaseous Propane, Butane, other Petroleum Gases	2711.29.00	Free.
Paraffin Waxes & Petroleum Jelly	2712.10.00–2712.90.20	Free.
Petroleum Coke and Asphalt	2713.11.00–2713.90.00	Free.
	2714.10.00–2715.00.00	Free.
Sulfur	2802.00.00	Free.
	2503.00.00	Free.
Sulfuric Acid	2807.00.00	Free.
Acyclic Hydrocarbons:		
Saturated:		
Ethane and Butane	2901.10.10	Free.
n-Pentane and Isopentane	2901.10.30	Free.
Other	2901.10.40	Free.
Unsaturated:		
Ethylene, Propylene, Butylene	2901.21.00–2901.23.00	Free.
Buta-1-3-diene	2901.24.10	Free.
Dicyclopentadiene	2902.19.0010	Free.
Cyclic Hydrocarbons:		
Benzene, Toluene and Xylenes	2902.20.00–2902.44.00	Free.
Cumene	2902.70.00	Free.
Pseudocumene	2902.90.10	Free.

[1] This is a comprehensive list of finished products that may be produced with NPF inputs at the subzones designated in Appendix A (Fed. Reg. Notice of 9/2/99, 64 FR 48140) based on previous FTZ Board authorizations for oil refineries.

[FR Doc. 01–1682 Filed 1–19–01; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1140]

Grant of Authority for Subzone Status; Tesoro Northwest Company (Oil Refinery), Anacortes, WA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Tacoma, grantee of FTZ 86, for authority to establish special-purpose subzone status at the oil refinery complex of Tesoro Northwest Company in Anacortes, Washington, was filed by the Board on March 15, 2000, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 10–2000, 65 FR 15305, 3/22/00); and,

Whereas, the Board adopts the findings and recommendations on the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 86D) at the oil refinery complex of Tesoro Northwest Company, in Anacortes, Washington, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.1000–#2710.00.1050, #2710.00.2500 and #2710.00.4510 which are used in the production of:

—Petrochemical feedstocks and refinery by-products (examiners report, Appendix ''C'');

—Products for export; and

—Products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 8th day of January 2001.

Troy H. Cribb,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Appendix C

STANDARD APPENDIX FOR OIL REFINERY SUBZONES [1] PETROCHEMICAL FEEDSTOCKS/REFINERY BY-PRODUCTS—NPF STATUS

	HTSUS No.	Duty rate
Benzene	2707.10.00	Free.
Toluene	2707.20.00	Free.
Xylenes	2707.30.00	Free.
Naphthalene	2707.40.00	Free.
Other Aromatic Hydrocarbon Mixtures	2707.50.00	Free.
Carbon Black Oil	2707.99.50	Free.
	2803.00.00	Free.
Distillates/Fuel Oils	2710.00.05	5.25¢/bbl.
	2710.00.10	10.5¢/bbl.
Kerosene	2710.00.20	10.5¢/bbl.
Naphthas (except motor fuel & blendstocks)	2710.00.25	10.5¢/bbl.
Mixtures of Hydrocarbons, not elsewhere specified	2710.00.45	10.5¢/bbl.
Liquified Natural Gas	2711.11.00	Free.
Propane	2711.12.00	Free.
Butanes	2711.13.00	Free.
Ethylene, Propylene, Butylene, Butadiene	2711.14.00	Free.
Ethane, other Liquefied Petroleum Gases	2711.19.00	Free.
Natural Gas, gaseous	2711.21.000	Free.
Gaseous Propane, Butane, other Petroleum Gases	2711.29.00	Free.
Paraffin Waxes & Petroleum Jelly	2712.10.00–2712.90.20	Free.
Petroleum Coke and Asphalt	2713.11.00–2713.90.00	Free.
	2714.10.00–2715.00.00	Free.
Sulfur	2802.00.00	Free.
	2503.00.00	Free.
Sulfuric Acid	2807.00.00	Free.
Acyclic Hydrocarbons:		
Saturated Ethane and Butane	2901.10.10	Free.
Unsaturated Ethylene, Propylene, Butylene	2901.21.00–2901.23.00	Free.
Buta-1-3-diene	2901.24.10	Free.
Dicyclopentadene	2902.19.0010	Free.
Cyclic Hydrocarbons: Benzene, Toluene and Xylenes	2902.20.00–2902.44.00	Free.
Cumene	2902.70.00	Free.
Pseudocumene	2902.90.10	Free.

[1] This is a comprehensive list of finished products that may be produced with NPF inputs at the subzones designated in Appendix A (Fed. Reg. Notice of 9/2/99, 64 FR 48140) based on previous FTZ Board authorizations for oil refineries.

[FR Doc. 01–1684 Filed 1–19–01; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice from Brazil; Preliminary Results of Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits of Preliminary Results of 1999–2000 Administrative Review.

EFFECTIVE DATE: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–0656.

Postponement of Preliminary Results of Administrative Review

The Department issued the initiation of the thirteenth administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil on June 30, 2000 (65 FR 41942 (July 7, 2000)). The current deadline for the preliminary results in this review is January 30, 2001. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department finds that the preliminary results cannot be issued within the original time frame due to the extraordinarily complicated nature of certain cost issues in this review.

Because it is not practicable to complete the administrative review within the time limits mandated by the Uruguay Round Agreements Act (245 days from the last day of the anniversary month for preliminary results), pursuant to section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department is extending the time limit for completion of the preliminary results of the administrative review until May 30, 2001.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 16, 2001.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 01–1842 Filed 1–19–01; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee (ETTAC)

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: February 8, 2001.

Time: 9:00 a.m. to 3:30 p.m.

Place: Room 3407, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUMMARY: The Environmental Technologies Trade Advisory Committee will hold a plenary meeting on February 8, 2001, in Room 3407 of the U.S. Department of Commerce.

During the morning, the ETTAC will hear reports on cross-cutting trade and environment issues including those at issue in the U.S.-Jordan, and U.S. Singapore free trade agreements negotiations and the Free Trade Agreement of the Americas. The ETTAC will also hear a report from its Government Resources Subcommittee and review past initiatives. In the afternoon, the ETTAC will conduct a strategic planning session.

The ETTAC is mandated by Public Law 103–392). It was created to advise on the environmental trade policies and programs of the U.S. Government and to help it to focus its resources on increasing the exports of the U.S. environmental industry. The ETTAC operates as an advisory committee to the Secretary of Commerce and the interagency Environmental Trade Working Group (ETWG) of the Trade Promotion Coordinating Committee (TPCC). The ETTAC was originally chartered in May of 1994. It was most recently rechartered until May 30, 2002. The ETTAC was created on May 31, 1994, to advise the U.S. government on policies and programs to expand U.S. exports of environmental products and services.

For further information phone Jane Siegel, Office of Technologies Industries, (ETI), U.S. Department of Commerce at (202) 482–5225. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to ETI.

Dated: January 12, 2001.

Carlos F. Montoulieu,

Deputy Assistant Secretary.

[FR Doc. 01–1602 Filed 1–19–01; 8:45 am]
BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On December 28, 2000, Dofasco filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final results of the full sunset review of antidumping duty orders made by the United States International Trade Commission, respecting Certain Corrosion-Resistant Steel Flat Products from Canada and the continuation of antidumping duty order by the U.S. Department of Commerce based on the International Trade Commission's determination. These determinations were published in the **Federal Register**, (65 FR 75301) on December 1, 2000 and (65 FR 78469) on December 15, 2000. The NAFTA Secretariat has assigned Case Number USA–CDA–00–1904–11 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on December 28, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is January 29, 2001);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is February 12, 2001); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 8, 2001.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 01–1819 Filed 1–19–01; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

[I.D. 011701A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fisheries Certificate of Origin.

Form Number(s): NOAA Form 370.

OMB Approval Number: 0648-0335.

Type of Request: Regular submission.

Burden Hours: 1,033.

Number of Respondents: 350.

Average Hours Per Response: 20 minutes for a processor response, 5 minutes for a Captain's statement.

Needs and Uses: Information required by International Dolphin Conservation Program Act (IDCPA), amendments to the Marine Mammal Protection Act (MMPA), is needed to document the dolphin safe status of tuna import shipments and domestic deliveries of tuna by U.S.-flag purse seine fishing vessels; verify that import shipments of fish were not harvested by large-scale, high seas driftnets; and verify that tuna was not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. Forms are submitted by importers, processors, and/or purse seine vessel operators.

Affected Public: Business and other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: January 12, 2001

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–1845 Filed 1–19–01; 8:45am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 2501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

DATES: Comments must be submitted on or before February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Division of Trading and Markets, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and refer to OMB Control No. 3038–0039.

SUPPLEMENTARY INFORMATION:

Title: Procedural Requirements for Requests for Interpretative, No-Action, and Exemptive Letters (OMB Control No. 3038–0049). This is a request for extension of a currently approved information collection.

Abstract: Commission Rule 140.99 requires persons submitting requests for exemptive, no-action, and interpretative letters to provide specific written information, certified as to completeness and accuracy, and to update that information to reflect material changes. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 12, 2000 (65 FR 77595).

Burden Statement: The respondent burden for this collection is estimated to average 7 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 280.

Estimated Number of Respondents: 280.

Estimated Total Annual Burden on Respondents: 1,957 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0049 in any correspondence.

Christopher W. Cummings, Division of Trading and Markets, U.S.

Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: January 16, 2001.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–1766 Filed 1–19–01; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Panel To Review the V–22 Program

ACTION: Notice of establishment.

SUMMARY: The Panel to Review the V–22 Program is being established in consonance with the public interest and in accordance with the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act,'' Title 5 U.S.C., Appendix 2. Due to the urgent business tasked to this Panel by the Secretary of Defense, this notice is being published less than 15 days before the Panel's establishment.

This Panel will conduct an independent, high-level review of the V–22 program to include safety of the aircraft and recommend any proposed changes or corrective actions, and report the results of the Secretary of Defense.

The Panel will consist of four members with expertise, knowledge, and the experience necessary in matters related to the V–22 review.

FOR FURTHER INFORMATION: Contact Gary Gray, OUSD (Acquisition, Technology, and Logistics), 703–697–0638.

Dated: January 12, 2001.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–1716 Filed 1–19–01; 8:45 am]

BILLING CODE 5000–10–m

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Information Technology Advisory Committee (formerly the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet)

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the President's Information Technology Advisory Committee. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463).

DATES: February 7 and 8, 2001.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Proposed Schedule and Agenda: The President's Information Technology Advisory Committee (PITAC) will meet in open session from approximately 3:00–5:00 p.m. on February 7 and 8:00 a.m.—2 p.m. on February 8, 2001.

This meeting will include: (1) Updates and reports from the PITAC's panels on: learning, digital libraries; healthcare; the digital divide; and international issues; (2) a discussion of PITAC's newly formed panels, especially national security and individual security; (3) a discussion on information technology and the Federal government; and (4) additional topics, as appropriate.

FOR FURTHER INFORMATION: The National Coordination Office for Information Technology Research and Development (formerly The National Coordination Office for Computing, Information, and Communications) provides information about this Committee on its web site at: http://www.itrd.gov; it can also be reached at (703) 292–4873. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: January 12, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–1719 Filed 1–19–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Cancellation of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Systems Technology for the Future U.S. Strategic Posture meeting scheduled for December 14–15, 2000, was not held.

Dated: January 12, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–1717 Filed 1–19–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Options for Acquisition of the Advance Targeting Pod and Advanced Technology FLIR Pod (ATP/ATFLIR) Will meet in closed session on January 17–18, 2001, and January 26, 2001, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA.

The mission of the DBS is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Task Force will review and evaluate the Department's options for acquisition of third generation Forward Looking Infrared (FLIR) targeting pods for the Air Force and the Navy. They will also consider the state of technical maturity of all the concepts and pods available, as will as the realism of the schedules and costs in view of other service flight program software, aircraft integration, and service specific requirements.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c) (1), and that accordingly these meetings will be closed to the public.

Due to critical mission requirements and the short timeframe to accomplish this review, there is insufficient time to provide timely notice required by Section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR Part 101–6, which further requires publication at least 15 calendar days prior to the first meeting of the Task Force on January 14–18, 2001.

Dated: January 12, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 01–1715 Filed 1–19–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Meeting date change of advisory committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Systems Technology for the Future U.S. Strategic Posture closed meeting scheduled for February 14–15, 2001, has been changed to February 13–14, 2001. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: January 12, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–1718 Filed 1–19–01; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Report

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Ocean Research Advisory Panel (ORAP) report, ''Strategic Vision for Achieving Sustainable Marine Resources Within the US EEZ,'' is available for public inspection.

DATES: Summary comments are desired by Tuesday, January 16, 2001, however the report will continue to be available for public review until June 30, 2001.

ADDRESSES: The report is available for review at and comments should be submitted to the National Oceanographic Partnership Program (NOPP) Program Office, 1755 Massachusetts Avenue, NW, Suite 800, Washington, DC 20036. See **SUPPLEMENTARY INFORMATION** section for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: Dr. Steven E. Ramberg, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660, telephone number (703) 696–4358.

SUPPLEMENTARY INFORMATION: This report was prepared in response to request by the National Ocean Research Leadership Council to prepare a strategic vision for a U.S. research program to study marine biological resources within the 200-nautical mile U.S. exclusive economic zone (EEZ) together with the means to make these resources economically and ecologically sustainable by 2010. The report is available for review on the NOPP website at http://www.nopp.org. Comments on the report may be submitted by electronic mail (e-mail) to nopp@brook.edu. This notice of report availability is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: January 5, 2001.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–1621 Filed 1–19–01; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Fund for the Improvement of Education (FIE) Program

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Educational Research and Improvement proposes a priority under the Fund for the Improvement of Education (FIE) for a grant competition for Community Coaches. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2001 and later years.

DATES: We must receive your comments on or before February 21, 2001.

ADDRESSES: Address all comments about this proposed priority to Pat O'Connell Ross, U.S. Department of Education, 555 New Jersey Avenue, NW., room 602D, Washington, DC 20202–5530. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov.

You must include the term Community Coaches in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Pat O'Connell Ross. Telephone: (202) 219–2169 or via Internet: patricia_ross@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 600, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

General Information

OERI administers the Fund for the Improvement of Education under section 10101, Part A of Title X of the Elementary and Secondary Education Act of 1965, as amended. The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals.

The Assistant Secretary is authorized, under section 10101, to support nationally significant programs and projects to improve the quality of education, and may carry out programs and projects through grants to State and local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions. These activities may

include activities to promote and evaluate counseling and mentoring for students, including intergenerational mentoring.

The Assistant Secretary believes that community coaches, who can help young people in learning through community service and who can serve to link the school with the business sector and the community, have the potential for providing high-quality, cost-effective mentoring for elementary and secondary students that can lead to improved personal, civic, and academic skills. The Assistant Secretary is interested in funding pilot projects that can serve as models for schools across the nation. These projects should support and evaluate the effectiveness of strategies that—

- Help young people gain concrete leadership skills by designing and implementing their own community-building projects;
- Help teachers and other school personnel identify and use the resources of their surrounding community to engage children in community service connected to their academic learning; and
- Engage students in hands-on learning and help them develop personal, civic, and academic skills through structured service projects that meet community needs.

Projects could include partnerships between schools and hospitals, nursing homes, community recreation centers, and human service agencies of all types. The community coaches could be AmeriCorp members, teachers, guidance counselors, or other members of the community.

Discussion of Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priority

Pilot Projects—Community Coaches for Elementary and Secondary Students

Projects that propose to develop and evaluate pilot programs that use community coaches in schools to help elementary or secondary or both students engage in structured service-learning projects that meet community needs. A ''community coach'' is a caring adult who offers guidance and support to young people and is committed to strengthening student community service. ''Service learning'' engages students in hands-on learning and helps them develop personal, civic, and academic skills through structured service projects that meet community needs.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF, you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at (888) 293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C.8001.

(Catalog of Federal Domestic Assistance Number 84.215 Fund for the Improvement of Education Program)

Dated: January 16, 2001.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 01–1761 Filed 1–17–01; 11:06 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.335]

Child Care Access Means Parents in School Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

Purpose of Program: The Child Care Access Means Parents In School (CCAMPIS) Program supports the participation of low-income parents in postsecondary education through the provision of campus-based childcare services.

Eligible Applicants: Institutions of higher education that have a total amount of all Federal Pell Grant funds awarded to students enrolled at the institution of higher education for the preceding fiscal year that equals or exceeds $350,000.

Deadline for Transmittal of Applications: April 24, 2001.

Deadline for Intergovernmental Review: June 25, 2001.

Applications Available: February 23, 2001.

Available Funds: $20,000,000.

Estimated Range of Awards: $10,000–$300,000. An institution will be eligible for a maximum grant award equal to one (1) percent of its Federal Pell Grant disbursement with no grant being less than $10,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 150–200.

Project Period: 48 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98 and 99.

In preparing applications, applicants should pay particular attention to the requirements in section 427 of the General Education Provisions Act (GEPA), as detailed later in this notice. Applicants must address the requirements in section 427 in order to receive funding under this competition. Section 427 requires each applicant to describe the steps it proposes to take for addressing one or more barriers (i.e., gender, race, national origin, color, disability, or age) that can impede equitable access to, or participation in, the program. A restatement of compliance with civil rights requirements is not sufficient to meet the requirements in section 427 of GEPA. Because there are no program-specific regulations for the Child Care Access Means Parents In School Program, applicants are encouraged to read the authorizing statute in section 419N of the Higher Education Act of 1965, as amended (HEA).

Priority:

Competitive Priority: Under 34 CFR 75.105(c)(2)(i) and 20 U.S.C. 1070e(d) the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards up to 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria:

Projects that leverage significant local or institutional resources, including in-kind contributions to support the activities, and use a sliding fee scale for childcare services provided by a facility assisted under this grant in order to support a high number of low-income parents pursuing postsecondary education at the institution.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria under 34 CFR 75.209 and 75.210 of EDGAR. The Secretary informs applicants in the application package of the selection criteria and factors, if any, to be used for this competition and of the maximum weight assigned to each criterion.

Page Limit: The application narrative (Part C of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We suggest you limit Part C to the equivalent of no more than 50 pages using the following standards:

- A ''page'' is 8.5″ x 11″ on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet, the budget section, including the narrative budget justification, the assurances and certifications, the three-page abstract, the resumes, or the letters of support. However, you must include all of the application narrative in Part C.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Child Care Access Means Parents In School (CCAMPIS) Program, CFDA No, 84.335, is one of the programs included in the pilot project. If you are an applicant under the CCAMPIS Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e=APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

(1) Print ED 424 from the e-APPLICATION system.
(2) Make sure that the institution's authorizing representative signs this form.
(3) Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
(4) Place the PR/Award number in the upper right hand corner of the ED 424.
(5) Fax the ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the CCAMPIS Program at: *http://e-grants.ed.gov*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (EDPUBS), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free) 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD) you may call toll free 1–877–576–7734. You may also contact EDPUBS at its web site: *http://www.ed.gov/pubs/edpubs.html.* Or you may contact EDPUBS at its e-mail address: *edpubs@net.ed.gov.*

If you request an application from EDPUBS, be sure to identify this competition as follows: CFDA number 84.335.

For Application or Information Contact: Karen W. Johnson, U.S. Department of Education, 1990 K Street, NW, Suite 7018, Washington, DC 20006. Telephone: (202) 502–7525. Fax: CCAMPIS Program (202) 502–7864. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals

with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: *http://ocfo.ed.gov/fedreg.htm* and http://www.ed.gov/news.html. To use PDF, you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1070e.

Dated: January 16, 2001.

Lee A. Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 01–1680 Filed 1–19–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Funds and Request for Applications To Support Medical Surveillance for Former Department of Energy Workers at the Pantex Plant in Amarillo, Texas

AGENCY: Office of Environment, Safety and Health, DOE.

ACTION: Notice of availability of funds and request for applications.

SUMMARY: The Department of Energy (DOE) Office of Environment, Safety and Health (EH) announces the availability of funds to evaluate former workers whose employment at the Pantex Plant in Amarillo, Texas, may have placed their long-term health at significant risk. This Notice of Availability of Funds and Request for Applications to Support Medical Surveillance for Former DOE Workers at the Pantex Plant does not affect cooperative agreements awarded pursuant to similar **Federal Register** announcements published on March 1, 1996, and March 25, 1997.

DATES: Applications submitted in response to this announcement must be received by March 30, 2001.

ADDRESSES: U.S. Department of Energy, Office of Health Studies, EH–6/270CC, 19901 Germantown Road, Germantown, Maryland 20874–1290.

FOR FURTHER INFORMATION CONTACT: Requests for further information may be directed to Ms. Kathleen Taimi, Office of Health Studies (EH–6), telephone: (301) 903–0262. Applications may be submitted to Ms. Taimi at the address listed above. (For application forms, please contact Ms. Sue Anderson, Office of Health Studies, telephone: (301) 903–7030.)

SUPPLEMENTARY INFORMATION:

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II. Project Description
III. DOE's Policy on Protection of Human Subjects Reviews
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V. Application Format
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I. Purpose

Section 3162 of the National Defense Authorization Act for Fiscal Year 1993 (Pub. Law 102–484) directs the Secretary of Energy, in consultation with the Secretary of Health and Human Services, to develop a program of medical evaluation for current and former DOE workers at significant risk for health problems due to exposures to hazardous or radioactive substances during employment. On March 1, 1996, the first ''Notice of Availability of Funds and Request for Applications to Support Medical Surveillance for Former DOE Workers'' was published in the **Federal Register** (61 FR 8047). In September 1996, the DOE Former Workers Program was implemented with the award of six cooperative agreements to begin projects at the following DOE sites: Hanford Site, Nevada Test Site, Rocky Flats Environmental Technology Site, Portsmouth Gaseous Diffusion Plant, Paducah Gaseous Diffusion Plant, and the Oak Ridge Reservation. At five of the sites, the project teams are focusing on a selected group or groups of former workers (e.g., production workers or construction workers). At the Rocky Flats Site, the project team has evaluated medical surveillance needs among all former workers.

On March 25, 1997, the second **Federal Register** Notice (62 FR 14123) announced the availability of additional funds for several new projects. In particular, DOE was interested in funding medical surveillance for former workers at major DOE sites not included in the first six projects. In September and December 1997, four new cooperative agreements were awarded to begin one project each at the Los Alamos National Laboratory and the Idaho Engineering and Environmental Laboratory, and two projects at the Savannah River Site. Currently, all ten projects in the DOE Former Workers Program are screening groups of former workers who are potentially at significant risk for health problems due to work-related exposures.

This third Notice announces the availability of funds for one new project to be funded through a cooperative agreement. DOE is interested in applications for a new project at the Pantex Plant in Amarillo, Texas. Former workers at this major DOE site are not included in any of the ongoing medical surveillance projects. DOE will accept applications only for a project at the Pantex Plant.

Experience with all of these projects will help DOE to evaluate needs and options for a long term medical surveillance program for former workers and to determine how such a program may be implemented and effectively integrated with other ongoing DOE activities.

II. Project Description

DOE intends to award one new cooperative agreement with specific goals identical to the goals of the ongoing projects. The goals of the DOE Former Workers Program projects are to:

- Identify groups of workers at significant risk for occupational diseases;
- Notify members of these risk groups; and
- Offer these workers medical screening that can lead to medical interventions.

The cooperative agreement will begin with a needs assessment, and continue with medical screening, if determined by DOE to be warranted. The needs assessment should provide the basis for identifying the group or groups of former Pantex workers who are potentially at significant risk for health problems due to work-related exposures. It is recommended that no group or groups of former workers be initially excluded from evaluation during the needs assessment. Applications that select only certain worker groups for evaluation, while excluding other former Pantex workers from the needs assessment process, must provide site-specific information that fully justifies such initial targeting.

Pursuant to this Notice, DOE intends to award one cooperative agreement

awarded in the amount of approximately $400,000 to conduct a needs assessment and to prepare a detailed plan for medical screening. This is expected to take 8–10 months. The medical screening, if warranted, will be funded through annual continuation awards under the same cooperative agreement for up to 3 more years. The estimated annual funding expected to be available for medical screening is $790,000.

Needs Assessment

The awardee shall conduct a needs assessment that will include a review of existing site-specific information and other means to identify the most significant radiation and non-radiation exposures to former Pantex workers. During the needs assessment, the awardee shall conduct the following tasks:

1. Identify existing information relevant to exposure and health outcomes among former workers;
2. Utilize this information to identify or develop viable methods for contacting these former workers;
3. Provide an initial determination of the most significant worker hazards, problems and concerns at the Pantex Plant;
4. Identify approaches for conducting the project in partnership with unions, site management, operating contractors, community representatives, and State and local health officials; and
5. Attend semiannual DOE-coordinated meetings of investigators to share information on ongoing Former Worker Program projects.

The awardee shall prepare a draft needs assessment report that will document the need for medical surveillance of former Pantex workers and describe the targeted cohort(s) for which further evaluation and medical screening is recommended. The draft report also will: (1) Define the size of the former workers target population; (2) document the specific chemical, physical and/or radiological hazards and the degree of potential exposure (duration and magnitude); and (3) characterize the nature and extent of the health impacts that are anticipated.

In addition, based upon the findings of the needs assessment, the awardee shall develop a detailed proposed plan and budget for medical screening of the targeted worker cohort(s). The proposed medical screening plan should include the specific tasks described below.

The awardee shall submit the draft needs assessment and the proposed plan and budget for medical screening to DOE within 10 months from the award date. DOE will evaluate the draft needs assessment report and proposed plan and budget for medical screening. The draft needs assessment report will be finalized following review and comment by DOE. If warranted, DOE will approve and support the medical screening plan and budget through annual continuation awards.

Medical Screening

The awardee shall conduct the following specific tasks to implement the approved medical screening plan:

1. Identify and locate those former workers who, based on the results of the needs assessment, are at significant risk of adverse health effects;
2. Ascertain the health concerns of former workers identified in task 1 related to their past DOE employment;
3. Communicate risk information to former workers regarding the nature of their health risk and discuss the actions that could be taken;
4. Provide medical screening to targeted former worker populations based on exposure history and the availability of acceptable screening tests;
5. Assist in the coordination of referrals, diagnostic workup, and follow-up treatment, including the coordination with state and federal workers' compensation programs and other existing insurance and benefits programs;
6. Ensure dialogue with local parties concerned with the project;
7. Evaluate former workers' satisfaction with the project; and
8. Attend semiannual DOE-coordinated meetings to share information with other Former Worker Program projects.

III. DOE's Policy on Protection of Human Subjects Reviews

DOE has codified the Federal Policy for the Protection of Human Subjects in 10 CFR part 745. As defined in this regulation, human subjects research may include a broad range of studies. DOE has determined that former worker medical surveillance projects fall under the broad definition of human subjects research, and, accordingly, each project requires Institutional Review Board (IRB) review and approval. The IRB review and approval process will ensure adequate protection of workers' privacy and confidentiality during project activities such as the review and collection of identifiable private information and the handling of personal medical records.

It is the DOE's policy that any DOE-funded project involving DOE workers at a specific site must be reviewed and approved by that DOE site's IRB. The DOE site IRB review takes place following award of the new cooperative agreement, and annually thereafter. Since the Pantex Plant yet does not have an IRB established, the DOE Human Subjects Manager will designate another DOE site's IRB for the review and approval of this project. In addition, applicants may have to comply with their own institution's requirements regarding review of human subjects research. Documentation of all required IRB approvals must be submitted to DOE prior to implementation of any project activities that involve collection of personally identified data or contact with individual workers.

IV. Applications

This Notice of Availability is issued pursuant to DOE regulations contained in 10 CFR part 602: ''Epidemiology and Other Health Studies Financial Assistance Program,'' as published in the **Federal Register** on January 31, 1995 (60 FR 5841). The Catalog of Federal Domestic Assistance number for 10 CFR part 602 is 81.108, and its solicitation control number is EOHSFAP 10 CFR part 602. 10 CFR part 602 contains the specific requirements for applications, evaluation, and selection criteria. Only those applications following these specific criteria and forms will be considered. Application forms may be obtained as noted above.

V. Application Format

The application shall contain two sections, technical scope of work and budget proposal. The technical scope of work shall be no more than fifty (50) pages in length; resumes of proposed key personnel should be submitted as an appendix to the technical scope of work and will not be counted against the page limit. Budget proposals have no page limit. Because the scope of medical screening will be dependent on the results of the needs assessment, the technical description of the proposed medical screening may be less specific than that for the needs assessment, but must clearly demonstrate a capability to conduct the medical screening. It is left to the applicant to determine how best to structure the application. However, the following information shall be included:

1. Applications shall include a detailed project description that discusses all of the specific tasks to be performed under the proposed project. At a minimum, the tasks listed above, in Section II, Project Description, must be described in detail for the needs assessment, and more generally for medical screening. The project description must include clear

statements of what is not known and what is uncertain, as well as statements of what is known. The project description must describe how independent, external peer review of the project will be conducted. The project description must demonstrate that the applicant has the ability to integrate its work with the activities of any other organizations at the Pantex Plant, as appropriate.

2. Applications must demonstrate the competency of project personnel and the adequacy of resources. Applications must demonstrate that the applicant is perceived as neutral and credible, and is capable of conducting scientifically valid and responsible medical surveillance projects. Applications must demonstrate that the applicant has the experience and capability to plan, organize, manage, and facilitate worker and union participation in planning and execution. Applications must also demonstrate that the applicant has the experience and ability to effectively communicate complicated scientific information on potential risks and uncertainties to workers, local and national stakeholders, concerned citizens, and decision makers at all levels. Applications must demonstrate that the applicant presently has or is capable of obtaining staff with the training, expertise, and experience needed to conduct a scientifically complex needs assessment and medical screening program. Applications must identify the technical and scientific staff that will conduct the project and detail their professional experience, as well as their level of project involvement. Applications must demonstrate that the applicant has the capability for both financial and scientific management, and a demonstrated skill in planning and scheduling a project of comparable magnitude to that proposed under this Notice.

3. The budget proposal for the needs assessment must include a summary breakdown of all costs, and provide a detailed breakdown of costs on a task-by-task basis for each task contained in the project description. Costs for the medical screening tasks may be more general estimates since the initial award will support the preparation of a more detailed plan for the medical screening. For planning purposes, as noted above in Section II, Project Description, it is expected that annual funding in the amount of $790,000 will be available for medical screening for up to 3 years. Any expectation concerning cost sharing must be clearly stated. Cost sharing is encouraged, but it will not be considered in the selection process.

4. Budget proposals shall include an estimate of the costs for any project support work by DOE site contractors not routinely provided by DOE (see section VII, DOE's Role). Costs for DOE contractor work such as copying, filming, scanning, and/or abstracting site data, including charges associated with any needed computer programming of data, should be included in the proposed budgets for the needs assessment and the medical screening.

VI. Application Evaluation and Selection

Applications will be subjected to formal merit review (peer review) and will be evaluated against the following criteria listed in descending order of importance and codified at 10 CFR 602.9(d):

1. Scientific and technical merit of the proposed research;

2. Appropriateness of the proposed method or approach;

3. Competency of research personnel and adequacy of proposed resources; and

4. Reasonableness and appropriateness of the proposed budget.

Applications will be peer reviewed by evaluators apart from DOE employees and contractors as described in the Office of Environment, Safety and Health's Merit Review System (57 FR 55524, November 25, 1992) and at 10 CFR 602.9(c). Submission of an application constitutes agreement that this is acceptable to the applicant. DOE is under no obligation to pay for any costs associated with preparation or submission of an application, whether or not an award is made.

DOE reserves the right to fund, in whole or in part, one or none of the applications submitted in response to this solicitation.

VII. DOE's Role

In order for DOE to utilize a cooperative agreement for this project, there must be substantial involvement between DOE and the awardee. DOE established the specific tasks for this project and will conduct the selection and award process, which will include evaluations by persons outside the Federal Government. DOE will provide programmatic direction, policy guidance and oversight through continuous consultation and interaction with project investigators. DOE will evaluate the results of the needs assessment and, if warranted, will fund medical screening at the Pantex Plant. As outlined in DOE's ''Access Handbook, Conducting Health Studies at Department of Energy Sites,'' DOE will facilitate access to the Pantex Plant, as appropriate, and help familiarize investigators with the facility and historical operations. DOE will facilitate access to exposure records, including the identification and retrieval of records relating to DOE activities, and declassification of records, as needed. DOE will establish requirements for data collection and reporting. DOE will coordinate the semiannual Former Worker Program meetings. DOE may establish an independent advisory group that will provide advice to DOE and to project investigators. Finally, DOE will monitor and evaluate the results of the project, including the worker participants' level of satisfaction. In addition to helping former workers at the Pantex Plant, information gained from this project will contribute to DOE's ongoing efforts to improve health and safety programs for current workers.

VIII. Applicants

Applicants for this cooperative agreement could include domestic nonprofit and for profit organizations, universities, medical centers, research institutions, other public and private organizations, including State and local governments, labor unions and other employee representative groups, and small, minority and/or women-owned businesses. Consortiums of interested organizations are strongly encouraged to apply. The awardees will work cooperatively with former workers, DOE site officials, DOE operating contractors, labor organizations, health officials, and designated community representatives.

Issued in Washington, DC, on January 11, 2001.

Paul J. Seligman,

Deputy Assistant Secretary for Health Studies.

[FR Doc. 01–1603 Filed 1–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 01–11: Scientific Discovery through Advanced Computing in High Energy and Nuclear Physics Research

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of High Energy and Nuclear Physics (HENP) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for the Department's Scientific Discovery

through Advanced Computing Program (SciDAC). The goal of this program is to enable the use of terascale computers to dramatically extend our exploration of the fundamental processes of nature as well as to advance our ability to predict the behavior of a broad range of complex natural and engineered systems. This goal is to be achieved through the creation of scientific simulation codes that achieve high performance on a single node, scale to hundreds of nodes and thousands of processors, and have the potential to adapt over time and to be ported to future generations of high performance computers. Projects should address a problem of national scientific or engineering significance clearly related to the mission of DOE. They are expected to have high visibility and to present a long-term vision of how their work will fundamentally impact scientific discovery in specific areas of High Energy Physics or Nuclear Physics research.

The full text of Program Notice 01–11 is available via the Internet at the following web site address: *http://www.science.doe.gov/production/grants/grants.html.*

DATES: Preapplications referencing this program notice must be received by 4:30 P.M. EST, February 7, 2001. A response encouraging or discouraging the submission of a formal application will be communicated by E-mail within 14 days.

Formal applications submitted in response to this notice must be received no later than 4:30 P.M., March 15, 2001, to be accepted for merit review and consideration for award in Fiscal Year 2001.

ADDRESSES: Preapplications referencing Program Notice 01–11 should be forwarded to: U.S. Department of Energy, Office of Science, Office of High Energy and Nuclear Physics, SC–20, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Peter Rosen. Preapplications can also be submitted via E-mail at the following E-mail address: peter.rosen@science.doe.gov.

Formal applications referencing Program Notice 01–11 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 01–11. The above address must be used when submitting applications by U.S. Postal Service Express Mail, any commercial mail delivery service, or when hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. S. Peter Rosen, Office of High Energy and Nuclear Physics, SC–20, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, E-mail: peter.rosen@science.doe.gov.

SUPPLEMENTARY INFORMATION:

Background: Scientific Discovery Through Advanced Computing

Advanced scientific computing will be a key contributor to scientific research in the 21st Century. Within the Office of Science (SC), scientific computing programs and facilities are already essential to progress in many areas of research critical to the nation. Major scientific challenges exist in all SC research programs that can best be addressed through advances in scientific supercomputing, *e.g.,* designing materials with selected properties, elucidating the structure and function of proteins, understanding and controlling plasma turbulence, and designing new particle accelerators. To help ensure its missions are met, SC is bringing together advanced scientific computing and scientific research in an integrated program entitled ''Scientific Discovery through Advanced Computing.''

The Opportunity and the Challenge

Extraordinary advances in computing technology in the past decade have set the stage for a major advance in scientific computing. Within the next five to ten years, computers 1,000 times faster than today's computers will become available. These advances herald a new era in scientific computing. Using such computers, it will be possible to dramatically extend our exploration of the fundamental processes of nature (*e.g.,* the structure of matter from the most elementary particles to the building blocks of life) as well as advance our ability to predict the behavior of a broad range of complex natural and engineered systems (*e.g.,* the earth's climate or an automobile engine).

To exploit this opportunity, these computing advances must be translated into corresponding increases in the performance of the scientific codes used to model physical, chemical, and biological systems. This is a daunting problem. Current advances in computing technology are being driven by market forces in the commercial sector, not by scientific computing. Harnessing commercial computing technology for scientific research poses problems unlike those encountered in previous supercomputers, in magnitude as well as in kind. As noted in the 1998 report [1] from the NSF/DOE ''National Workshop on Advanced Scientific Computing'' and the 1999 report [2] from the President's Information Technology Advisory Committee, this problem will only be solved by increased investments in computer software—in research and development of scientific simulation codes as well as on the mathematical and computing systems software that underlie these codes.

Investment Plan of the Office of Science

To meet the challenge posed by the new generation of terascale computers, SC will fund a set of coordinated investments as outlined in its long-range plan for scientific computing, Scientific Discovery through Advanced Computing,[3] submitted to Congress on March 30, 2000. First, it will create a Scientific Computing Software Infrastructure that bridges the gap between the advanced computing technologies being developed by the computer industry and the scientific research programs sponsored by the Office of Science. Specifically, the SC effort proposes to:

- Create a new generation of Scientific Simulation Codes that take full advantage of the extraordinary computing capabilities of terascale computers.
- Create the Mathematical and Computing Systems Software to enable the Scientific Simulation Codes to effectively and efficiently use terascale computers.
- Create a Collaboratory Software Environment to enable geographically separated scientists to effectively work together as a team and to facilitate remote access to both facilities and data.

These activities are supported by a Scientific Computing Hardware Infrastructure that will be tailored to meet the needs of SC's research programs. The Hardware Infrastructure is robust, to provide the stable computing resources needed by the scientific applications; agile, to respond to innovative advances in computer technology that impact scientific computing; and flexible, to allow the

[1] This workshop was sponsored by the National Science Foundation and the Department of Energy and hosted by the National Academy of Sciences on July 30–31, 1998. Copies of the report may be obtained from: http://www.er.doe.gov/production/octr/mics/index.html

[2] Copies of the PITAC report may be obtained from http://www.cclc.gov/ac/report/.

[3] Copies of the SC computing plan, Scientific Discovery through Advanced Computing, can be downloaded from the SC web site at: http://www.sc.doe.gov/production/octr/index.html.

most appropriate and economical resources to be used to solve each class of problems. Specifically, the SC proposes to support:

• A Flagship Computing Facility, the National Energy Research Scientific Computing Center (NERSC), to provide the robust, high-end computing resources needed by a broad range of scientific research programs.

• Topical Computing Facilities to provide computing resources tailored for specific scientific applications and to serve as the focal point for an application community as it strives to optimize its use of terascale computers.

• Experimental Computing Facilities to assess the promise of new computing technologies being developed by the computer industry for scientific applications.

Both sets of investments will create exciting opportunities for teams of researchers from laboratories and universities to create new revolutionary computing capabilities for scientific discovery.

The Benefits

The Scientific Computing Software Infrastructure, along with the upgrades to the hardware infrastructure, will enable laboratory and university researchers to solve the most challenging scientific problems faced by the Office of Science at a level of accuracy and detail never before achieved. These developments will have significant benefits to all of the government agencies that rely on high-performance scientific computing to achieve their mission goals as well as to the U.S. high-performance computing industry.

Background: Scientific Simulation in High Energy Physics and Nuclear Physics Research

The Office of High Energy and Nuclear Physics supports a program of research into the fundamental nature of matter and energy. In carrying out this mission it:

• Builds and operates large, world class charged-particle accelerator facilities for the nation and for the international scientific research community;

• Builds detectors and instruments, for accelerator and non-accelerator based experiments, designed to answer fundamental questions about the nature of matter and energy; and

• Carries out a program of scientific research based on experimental data, theoretical studies, and scientific simulation.

This solicitation is focused on proposals to accelerate progress through the use of scientific simulation codes.

Computational modeling and simulation are among the most significant developments in the practice of scientific inquiry in the 20th century. The coming advances in computing performance, if they can be realized for scientific problems, herald a new era in scientific computing. If computers capable of 100 teraflops or more become available in the next few years, it will be possible to dramatically extend our exploration of the fundamental processes of nature. It will also be possible to predict the behavior of a broad range of complex systems, such as charged-particle accelerator components, and eventually entire accelerators.

However, it is clear that the development of scientific codes that are capable of utilizing terascale computers efficiently and are adaptable, portable and re-usable is a massive undertaking that could take as long as 8–10 years to achieve its most ambitious scientific goals. This may require efforts of hundreds of person-years of work.

It is also apparent that the most appropriate, cost-effective computing resources for scientific simulations vary significantly from application to application. Therefore, much work is needed to understand the optimal configuration of computing hardware for each task and to design operating environments best able to foster significant scientific discoveries.

This solicitation is for proposals that articulate the long-term vision and potential for scientific progress through simulation, whilst laying out a concrete step-wise program of work and scientific research for the next 3 to 5 years.

The scope and complexity of the proposed projects will require close collaboration among researchers from computational and theoretical physics, computer science, and applied mathematics disciplines. Accordingly, this solicitation calls for the creation of scientific simulation teams, or collaborations, as the organizational basis for a successful application. A scientific simulation team is a multi-institutional, multi-disciplinary group of people who will:

• Create scientific simulation codes that take full advantage of terascale computers,

• Work closely with other SciDAC teams and centers to ensure that the best available mathematical algorithms and computer science methods are employed, and

• Manage the work of the team in a way that will foster good communication and decision making (see section on Collaboration and Coordination below).

Partnerships among universities, national laboratories, and industry are encouraged. Applications are being sought in the broad topical areas listed below.

Accelerator Science and Simulation

The successful development of large accelerator facilities involves enormous investments in theory, experiment and simulation. Optimizing the performance of current accelerators and the design of future accelerators will require unprecedented precision in accelerator component design and beam dynamics and control. Applicants should explain how the proposed program of work will facilitate important design decisions, increase safety and reliability, optimize performance and reduce the cost of accelerators.

The development of a comprehensive, coherent terascale simulation environment for the U.S. particle accelerator community will involve development of new computational models and codes, mathematical models, program frameworks and visualization techniques. The scientific software, while making good use of existing codes for (a) calculations for the design of complex electromagnetic components and systems and (b) beam dynamics calculations for predicting beam halo, must provide high performance on terascale computers and be capable of scaling to 100 teraflops or more. New codes will need to be developed for problems, such as electromagnetic modeling of lossy structures and wakefields, parallel static computation for electric and magnetic component design, and parallel modeling of intense beams in injectors, linear and circular machines. Models need to be developed to include a range of physical phenomena such as collisions, synchrotron radiation, and surface emissions. In order to simulate accelerator components and entire accelerators, the scientific simulation codes will need to work together to carry out simulations of complex systems involving tight coupling of beam dynamics and electromagnetics.

Collaborative work with Fusion Energy Scientists may also be useful since there are some common problems related to modeling electromagnetic fields and beam dynamics.

Theoretical Research

In the past few years, several areas of theoretical research have demonstrated

the potential to further scientific knowledge by efficiently using scientific simulation codes on terascale computers to:

• Provide a major quantitative tool for simulations of quantum chromodynamics (QCD) on a lattice, which will:

(a) Provide crucial information in support of the experimental programs in high energy and nuclear physics.

(b) Make accurate determinations of a number of fundamental quantities, such as the coupling constant that determines the strength of quark-gluon interactions, and the underlying masses of the quarks.

(c) Explore the limitations, if any, of the ''Standard Model'' of particle interactions.

(d) Explore how quarks and gluons provide the binding and spin of the nucleon.

• Develop theoretical models of complex systems under extreme conditions, such as:

(a) Exploration of complex theoretical models of supernovae and comparison of the predictions with experimental results.

(b) Study of the behavior of supersymmetric and other quantum field theories.

Particular areas of interest include, but are not limited to:

Quantum Chromodynamics (QCD)

The development of a coherent terascale simulation environment for the study of QCD that will permit evolution of scientific codes to take advantage of 100 teraflop computers is a challenging problem. It demands a coordinated effort to provide the computer software infrastructure, the detailed scientific codes and algorithms, together with effective ways of using computing hardware now and in the future.

Simulations of Complex Nuclear Structure, Such as Found in Core-Collapse Supernovae

The development of a comprehensive model that brings together nuclear physics, particle physics, fluid dynamics, radiation transport, and general relativity is an equally challenging problem. Data from next-generation neutrino detectors, gravitational wave observatories, ground and space-based observatories, new radioactive beam facilities, and other experimental facilities will provide opportunities to evaluate and refine the many underlying physical models in the simulation.

Testbeds and Collaboratory Software Environments

Collaboratories link geographically dispersed researchers, data and tools, via high performance networks, to enable remote access to facilities, access to large datasets and shared environments. They enable geographically separated scientists to effectively work together as a team and facilitate remote access to both computing facilities and data.

As the size and complexity of high energy and nuclear physics experiments has increased so have the number and geographical dispersion of the researchers and the amount of data that must be collected, simulated and analyzed. Thus future experiments critically depend on the existence of such distributed hardware and software environments for their success. The scientific simulation applications that are the focus of this solicitation will also consist of geographically dispersed researchers, and will require high performance networks, to enable remote access to computing facilities, and multi-terabyte datasets.

Proposals for testbeds and collaborations across organizations that include network researchers, middleware developers and high energy and nuclear physicists are encouraged. However, they should be submitted in response to Notice 01–06 of the Office of Advanced Scientific Computing Research (ASCR). Copies should also be submitted to the Office of High Energy and Nuclear Physics, and joint funding can be considered.

Collaboration and Coordination

It is expected that all applications submitted in response to this notice will be for scientific simulation teams involving more than one institution. Applications from different institutions, directed at a common research activity, must include a common technical description of the overall research project. Each participating institution must have a qualified principal investigator, who is responsible for the part of the effort at that institution, and separate face pages and budget pages for each institution. The distinct scope of work proposed for each institution must be clearly specified. Any work proposed in computer science or applied mathematics should also be described separately. Applicants should include cost sharing whenever feasible. Synergistic collaborations with researchers in federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories are encouraged, although funds will not be provided to these organizations under this particular Notice. Further information on preparation of collaborative proposals is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.science.doe.gov/production/grants/Colab.html.*

Preapplications

Potential applicants are strongly encouraged, but not required, to submit a brief preapplication consisting of two or three pages of narrative describing the research objectives, technical approaches and management plan. Each preapplication should include a cover sheet with the title of the project, project principal investigator, institutions involved, and their principal investigators and senior personnel. The name, telephone number, and e-mail address of each principal investigator should also be provided. In addition, brief, one-page curriculum vitae should be submitted for the principal investigators and other senior personnel involved. Preapplications will be evaluated to assess their programmatic relevance, and a response will be provided to the principal investigator within 14 days of receipt. However, notification of a successful preapplication is not an indication that an award will be made in response to a formal application.

Program Funding

Up to $2,500,000 of Fiscal Year 2001 funding will be available for grant awards in FY 2001. Additional funding for each proposed project may be available through the Office of Advanced Scientific Computing Research for closely related research in computer science and/or applied mathematics. Applications may request support for up to three years, with out-year support contingent on the availability of funds and satisfactory progress. To support multi-disciplinary, multi-institutional efforts, funding levels of up to $1.0 million per project may be requested, under this notice, for the first year of the project. Requests for increased funding levels in future years will be entertained subject to availability of funds, progress of the funded activity, and programmatic needs.

As required by the SC Grant Application Guide, applicants must submit their budgets using the Budget Page (DOE Form 4620.1) with one Budget Page for each year of requested funding. The requested funding for the

proposed work in computer science and applied mathematics should be included with the other project costs on the Budget Page. However, applicants are also requested to list the proposed computer science and applied mathematics costs separately in an appendix, as the Office of Advanced Scientific Computing Research may support this part of the work (up to 20–25% of the total project cost). The Office of High Energy and Nuclear Physics expects to fund three or four successful projects, depending on the size of the awards.

Evaluation Criteria

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria listed in descending order of importance as codified in 10 CFR 605.10(d) (www.science.doe.gov/production/grants/605index.html):

1. Scientific and/or technical merit of the project,

2. Appropriateness of the proposed method or approach,

3. Competency of the applicant's personnel and adequacy of the proposed resources,

4. Reasonableness and appropriateness of the proposed budget.

The evaluation of applications under item 1, Scientific and Technical Merit, will pay particular attention to:

(a) the potential of the proposed project to achieve a major advance in high energy and/or nuclear physics;

(b) the potential of the proposed project to advance the state-of-the-art in computational modeling and simulation in areas pertinent to high energy and nuclear physics research;

(c) the need for extraordinary computing resources to address problems of critical scientific importance to the high energy physics or nuclear physics program and the demonstrated abilities of the applicants to exploit terascale computers;

(d) knowledge of and coupling to previous efforts in scientific simulation;

(e) the extent to which the project incorporates broad community (industry/academia/other federal programs) interaction;

(f) the extent to which the results of the project are likely to be extensible to other program or discipline areas; and

(g) the importance of the proposed project to the mission of the Office of High Energy and Nuclear Physics and its impact on overall DOE goals.

The evaluation under item 2, Appropriateness of the Proposed Method or Approach, will also consider the following elements related to appropriateness of the proposed Scientific Computing Hardware Infrastructure to be used and of the quality of planning:

(a) Viability of the plan with respect to the scale and nature of current and future Computing Hardware Infrastructure needed;

(b) clarity of the plan in detailing areas of work to be addressed by discipline scientists, computational scientists, applied mathematicians, computer scientists and computer programmers;

(c) quality of the plan for effective collaboration among participants;

(d) quality of the plan for ensuring communication with other advanced computation and simulation efforts;

(e) viability of the plan for deploying the software and for assuring long-term maintenance, support, and re-use of the scientific codes and software infrastructure developed;

(f) viability of the plan for verifying and validating the models developed, including verification using experiment results; and

(g) quality and clarity of the proposed work schedule and project deliverables.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs.

Note, that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Science (SC) Financial Assistance Program and in 10 CFR part 605. Electronic access to SC's Financial Assistance Guide and required forms is made available via the Internet using the following Web site address: *http://www.science.doe.gov/production/grants/grants.html.*

In addition, for this notice, project descriptions must be 25 pages or less, including tables and figures, but excluding attachments. The application must also contain an abstract or project summary, letters of intent from all non-funded collaborators, and short curriculum vitae of all senior personnel. On the SC grant Face Page (DOE Form 4650.2), in block 15, also provide the Principal Investigator's phone number, FAX number, and E-mail address.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington DC on January 10, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–1782 Filed 1–19–01; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, Section 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a two-year period beginning in January 2001. The Committee will provide advice to the Director, Office of Science, on the basic energy sciences program.

The Secretary has determined that the renewal of the Basic Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Public Law 99–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this advisory committee can be obtained from Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on January 16, 2001.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 01–1692 Filed 1–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

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), Fernald. The Federal

Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 5, 2001 6:00 p.m.–8:30 p.m.

ADDRESSES: Fernald Environmental Management Project Site, Services Building Conference Room, 7400 Willey Road, Hamilton, OH 45219.

FOR FURTHER INFORMATION CONTACT: Lois Yasutis, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (703) 971–0030 or e-mail; *lyasutis@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m. Call to Order
6:00–6:15 p.m. Chair's Remarks and Announcements
6:15–8:15 p.m. Presentation and Discussion of Rebaselining Scenarios
8:15–8:30 p.m. Public Comment
8:30 p.m Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: 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 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on January 1, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–1694 Filed 1–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel Renewal

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 101–6.1015(a)(1), title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel has been renewed for a two-year period, and joint ownership has been instituted for the Department of Energy and National Science Foundation (NSF) beginning in January 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel at (202) 586–3279.

SUPPLEMENTARY INFORMATION: The Panel will provide advice to the Director of the Office of Science (DOE), and the Assistant Director, Mathematical & Physical Sciences Directorate (NSE), on long-range planning and priorities in the national high-energy physics program. The Secretary of Energy and Director of the National Science Foundation have determined that renewal of the Panel is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy and the National Science Foundation. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Issued in Washington DC on January 16, 2001.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 01–1693 Filed 1–19–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–691–000]

Duke Energy Hinds, LLC; Notice of Issuance of Order

Duke Energy Hinds, LLC (Duke Hinds) submitted for filing a rate schedule under which Duke Hinds will engage in wholesale electric power and energy transactions at market-based rates. Duke Hinds also requested waiver of various Commission regulations. In particular, Duke Hinds requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Duke Hinds.

On January 9, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Hinds 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).

Absent a request for hearing within this period, Duke Hinds is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security or another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Hinds's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http:/*

/www.ferc.fed.us/online/rims. (call 202–208–2222 for assistance).

David P. Boerger,

Secretary.

[FR Doc. 01–1580 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–65–000]

Eastern Shore Natural Gas Company; Notice of Application

January 16, 2001.

Take notice that on January 11, 2001, Eastern Shore Natural Gas Company (Eastern Shore), Post Office Box 1769, Dover, Delaware 19903–1769, filed in Docket No. CP01–59–000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to construct and operate additional pipeline and compression facilities in Maryland and Pennsylvania to expand its system by providing added transportation capacity, 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/htm* (call 202–208–2222 for assistance).

Eastern Shore proposes to construct and operate 6 miles of 16-inch pipeline looping on its existing system in Maryland and Pennsylvania to install 3,330 horsepower of additional capacity at the existing Daleville Compressor Station on Eastern Shore's system in Chester County, Pennsylvania, and to install delivery point facilities in Chester County, Pennsylvania. It is stated that the proposed construction would enable Eastern Shore to provide 19,800 dt equivalent of additional daily firm service capacity on its system. Eastern Shore estimates the total cost of the proposed facilities at $12,478,745. It is requested that a certificate be issued allowing construction to be completed by November 1, 2001.

Eastern Shore asserts that the facilities would provide system-wide benefits without requiring a rate increase for existing customers. Therefore, Eastern Shore requests a determination that the cost of the project be given rolled-in rate treatment. Eastern Shore convened an open season for the additional capacity and secured 10-year firm contracts with PECO Energy Company, Connectiv Power Delivery, and Delaware Division of Chesapeake Utilities Corporation for the additional capacity.

Any questions regarding the application should be directed to Stephen C. Thompson, President, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904, (302) 734–6710.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 6, 2001, file with the Federal Energy Regulatory Commission, 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. Comments and protests may be filed electronically in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at http://ferc.fed.us/efi/doorbell.htm.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 a grant of the certificate is 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 of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Eastern Shore to appear or be requested at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 01–1754 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–574–000]

Hunlock Creek Energy Ventures; Notice of Issuance of Order

January 12, 2001.

Hunlock Creek Energy Ventures (Hunlock) submitted for filing a rate schedule under which Hunlock will engage in wholesale electric power and energy transactions at market-based rates. Hunlock also requested waiver of various Commission regulations. In particular, Hunlock requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Hunlock.

On January 9, 2001, pursuant to delegated authority, the director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Hunlock 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).

Absent a request for hearing within this period, Hunlock is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Hunlock's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 8, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order 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. 01–1582 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–480–000 and ER01–480–001]

Mobile Energy, LLC; Notice of Issuance of Order

January 12, 2001.

Mobile Energy, LLC (Mobile) submitted for filing a rate schedule under which Mobile will engage in wholesale electric power and energy transactions at market-based rates. Mobile also requested waiver of various Commission regulations. In particular, Mobile requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Mobile.

On January 10, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Mobile 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).

Absent a request for hearing within this period, Mobile is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Mobile's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 9, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order 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. 01–1581 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–52–000]

Raton Gas Transmission Company; Notice of Filing

January 12, 2001.

Take notice that on December 18, 2000, pursuant to Section 7(c) of the Natural Gas Act, 15 U.S.C. 717f(c), and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, Raton Gas Transmission Company (Raton) filed an abbreviated application for an amendment to its certificate of public convenience and necessity.

Raton requests that the Commission amend Raton's present certificate, and authorize Raton to transport natural gas on behalf of Zia Natural Gas Company, Raton Natural Gas Company and the City of Las Vegas, New Mexico.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 or 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 2, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

David P. Boergers,

Secretary.

[FR Doc. 01–1579 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC01–35, et al.]

Riverside Canal Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 12, 2001.

Take notice that the following filings have been made with the Commission:

1. Riverside Canal Power Company

[Docket No. EC01–35–000]

Take notice that on January 10, 2001, Riverside Canal Power Company (Riverside) tendered for filing, pursuant to section 203 of the Federal Power Act, supplemental information for its application for authority to lease certain jurisdictional facilities to Southern California Edison Company for the periods of August 15, 2000 to October

30, 2000 and from June 1, 2001 through October 31, 2001.

Comment date: January 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Enron North America Corp., Brownsville Power I, L.L.C., Caledonia Power I, L.L.C., and Cinergy Capital & Trading, Inc.

[Docket No. EC01–53–000]

Take notice that on January 10, 2001, Enron North America Corp. (ENA), on behalf of two wholly-owned subsidiaries, (Brownsville Power I, L.L.C. (Brownsville) and Caledonia Power I, L.L.C. (Caledonia)), and Cinergy Capital & Trading, Inc. (CCT) tendered for filing an application requesting all necessary authorizations under section 203 of the Federal Power Act for ENA to sell, and for CCT to purchase, securities evidencing one hundred percent (100%) ownership interests in Brownsville and Caledonia.

Comment date: January 31, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Utilities Company

[Docket Nos. ER95–1586–007; EL96–17–000; OA96–184–000]

Take notice that on January 3, 2001, in compliance with the Commission's letter order of November 13, 1997 approving the September 12, 1997 Settlement Agreement in the above-referenced proceedings, Citizens Communications Company (CCC), formerly known as Citizens Utilities Company, filed its Second Refunds Compliance Report.

A copy of this filing was served on the service list in the above-referenced dockets. In addition, a copy is available for inspection at the offices of CCC's Vermont Electric Division during regular business hours.

Comment date: January 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Citizens Utilities Company

[Docket Nos. ER95–1586–008; EL96–17–003; OA96–184–005]

Take notice that on January 3, 2001, in compliance with the terms of the September 12, 1997 Settlement Agreement in the above-referenced proceedings, as amended, Citizens Communications Company (CCC), formerly known as Citizens Utilities Company, filed certain tariff and rate schedule sheets with respect to its Vermont Electric Division's open access transmission tariff (CCC's FERC Electric Tariff Original Volume No. 2), and Rate Schedule FERC No. 28. To comply with the terms of the Settlement Agreement, CCC requests an effective date of January 3, 2001 for these tariff and rate schedule sheets.

A copy of this filing was served on the service list in the above-referenced proceedings. In addition, a copy is available for inspection at the offices of CCC's Vermont Electric Division during regular business hours.

Comment date: January 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Citizens Utilities Company

[Docket Nos. ER95–1586–009; EL96–17–000; OA96–184–000]

Take notice that on January 5, 2001, Citizens Communications Company (CCC), formerly known as Citizens Utilities Company, filed a supplement to the Second Refunds Compliance Report, which CCC filed with the Commission on January 3, 2001.

A copy of this filing was served on the service list in the above-referenced proceedings. In addition, a copy is available for inspection at the offices of CCC's Vermont Electric Division during regular business hours.

Comment date: January 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER01–475–001]

Take notice that on January 8, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Mississippi, Inc., tendered for filing in this docket a supplement to its November 17, 2000 filing of the First Revised Interconnection Agreement with Southaven Power LLC. Entergy states that the filing consists of a revised blackline version of the First Revised Interconnection Agreement that reflects the changes to the agreement resulting from that filing.

Comment date: January 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Williams Energy Marketing & Trading Company

[Docket No. ER01–911–000]

Take notice that on January 8, 2001, Williams Energy Marketing & Trading Company (Williams EM&T) tendered for filing pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (1994), and part 35 of the Commission's Regulations, 18 CFR part 35, revised pages to the Reliability Must-Run Service Agreements (RMR Agreements) between Williams EM&T and the California Independent System Operator Corporation (ISO) for certain RMR units located at the Alamitos, Huntington Beach, and Redondo Beach Generating Stations.

The purpose of the filing is to update Williams EM&T's existing RMR Agreements to reflect an extension of two of the three existing RMR Agreements, a change in units under those agreements, and certain annual updates to Schedules A, B, C, D, F and J of the RMR Agreements.

Williams EM&T requests waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3, to permit its revised RMR Agreements to become effective as of January 1, 2001.

Copies of the filing were served upon the ISO and Southern California Edison Company.

Comment date: January 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Central Maine Power Company

[Docket No. ER01–912–000]

Take notice that on January 8, 2001, Central Maine Power Company (CMP) submitted for filing a ''Transmission and Distribution Separation Filing,'' in order to separate CMP's overall transmission and distribution requirement into its components. The Maine Public Utility Commission has approved this transmission and distribution split pursuant to Order No. 888's seven-factor test.

Comment date: January 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER01–913–000]

Take notice that on January 8, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Transmission Management Services, L.L.C.

Comment date: January 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER01–914–000]

Take notice that on January 8, 2001, Commonwealth Edison Company (ComEd) submitted for filing an executed Dynamic Scheduling Agreement (Agreement) with its

Wholesale Merchant Function Division (WMD) under ComEd's Open Access Transmission Tariff (OATT). The Agreement provides the necessary arrangements for Dynamic Scheduling under a Service Agreement for 35 MW of point-to-point transmission service from ComEd to AEP to service a load connected to the AEP system for the period January 1, 2001 to December 31, 2001.

ComEd requests an effective date of January 1, 2001.

Comment date: January 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. CPN Pleasant Hill, LLC and CPN Pleasant Hill Operating, LLC

[Docket No. ER01–915–000]

Take notice that on January 8, 2001, CPN Pleasant Hill, LLC (CPN), and CPN Pleasant Hill Operating LLC (CPN Operating) tendered for filing proposed market-based rate schedules and under which CPN and CPN Operating will make wholesale sales of electric energy, capacity, and ancillary services at market-based rates. In addition, CPN Operating submits for filing under section 205 of the Federal Power Act two power sales agreements.

Comment date: January 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER01–916–000]

Notice of Filing: Take notice that on January 9, 2001, Arizona Public Service Company (APS) tendered for filing Service Agreements to provide Long-Term Firm Point-to-Point Transmission Service to Public Service Company of New Mexico, Wholesale Power Marketing under APS'' Open Access Transmission Tariff.

A copy of this filing has been served Public Service Company of New Mexico, Wholesale Power Marketing, and the Arizona Corporation Commission.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. Arizona Public Service Company

[Docket No. ER01–917–000]

Take notice that on January 9, 2001, Arizona Public Service Company (APS) tendered for filing a Generator Interconnection Facilities Construction Agreement that sets forth an arrangement under which APS will construct, own, and operate interconnection facilities for Panda Gila River, L.P. The interconnection facilities are necessary to deliver power from Panda's proposed generating facility.

A copy of this filing has been served on the Arizona Corporation Commission and Panda Gila River, L.P.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company and Arizona Electric Power Cooperative, Inc.

[Docket No. ER01–918–000]

Take notice that January 9, 2001, Arizona Public Service Company (APS) and Arizona Electric Power Cooperative, Inc. filed a Notice of Cancellation of APS–FPC Rate Schedule No. 62.

Copies of the filing have been sent to AEPCO and the Arizona Corporation Commission.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. Engage Energy America, LLC.

[Docket No. ER01–919–000]

Take notice that on January 9, 2001, Engage Energy America LLC. submitted a Notice of Succession pursuant to 18 CFR 35.16 and 131.51 of the Commission's regulations. Engage Energy America Corp (WGSI Delaware) has changed its name to Engage Energy America LLC. and effective December 29, 2000, succeeded to Engage Energy America Corp.''s First Revised Rate Schedule FERC No. 1, Market-Based Rate Schedule filed in Docket No. ER01–251–000, which was effective October 27, 2000.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. Northern Indiana Public Service Company

[Docket No. ER01–920–000]

Take notice that on January 9, 2001, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Engage Energy America Corporation (EEAC).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to EEAC pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of January 10, 2001.

Copies of this filing have been sent to Engage Energy America Corporation, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER01–921–000]

Take notice that on January 9, 2001, Commonwealth Edison Company (ComEd) tendered for filing a MBR Sales Agreement with NewEnergy Midwest, LLC as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of December 20, 2000 for the agreement and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on NewEnergy Midwest, LLC.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Westcoast Power Marketing Inc.

[Docket No. ER01–922–000]

Take notice that on January 9, 2001, Westcoast Power Marketing Inc. (Westcoast Power), Canada Trust Tower, 1100, 421–7th Avenue, SW. Calgary, Alberta, Canada T2P 4K9 filed in Docket No. ER95–378 pursuant to 18 CFR 35.13 and 131.53 of the Federal Energy Regulatory Commission's Rules and Regulations, a Notice of Cancellation to become effective January 10, 2001.

Westcoast Power states that it has never entered into any wholesale electric power or energy transactions, and has never utilized its Electric Rate Schedule FERC No. 1.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. Southern California Edison Company

[Docket No. ER01–923–000]

Take notice, that on January 9, 2001, Southern California Edison Company (SCE) tendered for filing the SCE–CDWR Cherry Valley, Crafton Hills and Greenspot Pumping Stations Interconnection Facilities Agreement (Agreement) between SCE and the State of California Department of Water Resources (CDWR).

Copies of this filing were served upon the Public Utilities Commission of the State of California and the State of California Department of Water Resources.

Comment date: January 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ES01–15–000]

Take notice that on January 5, 2001, Florida Keys Electric Cooperative Association, Inc. (Florida Keys) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term promissory notes in an amount not to exceed $8.7 million.

Florida Keys also requests a waiver of the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment date: February 2, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. Ogden Martin Systems of Fairfax, Inc.

[Docket No. ES01–16–000]

Take notice that on January 8, 2001, Ogden Martin Systems of Fairfax, Inc. submitted an application pursuant to section 204 of the Federal Power Act seeking a blanket authorization to issue securities and debt.

Comment date: January 29, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 or protests should be filed on or before the Comment date. 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 these filings 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. 01–1781 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, EL00–95–002, EL00–95–003, EL00–98–000, EL00–98–002, EL00–98–003, EL00–107–000, EL00–97–000, EL00–104–000, EL01–1–000, EL01–27–000 and EL01–10–000]

San Diego Gas & Electric Company, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Public Meeting in San Diego, California; Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc., and Southern Energy California, L.L.C., Complainants, v. California Independent System Operator Corporation, Respondent; California Electricity Oversight Board, Complainant, v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; California Municipal Utilities Association, Complainant, v. all Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Californians for Renewable Energy, Inc. (CARE), Complainant, v. Independent Energy Producers, Inc., and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange; All Scheduling Coordinators Acting on Behalf of the Above Sellers; California Independent System Operator Corporation; and California Power Exchange Corporation, Respondent; Puget Sound Energy, Inc., Complainant v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Powers Pool Agreement, Respondents; Notice of Organization Of Technical Conference

January 16, 2001.

This notice announces the organization of the previously noticed technical conference, to be held on January 23, on the development of market monitoring procedures for the markets involving the California Independent System Operator.

The conference will begin with a discussion of the principles that should govern market monitoring and an identification of the issues that need to be resolved to develop a market monitoring plan. Following this discussion examples of market monitoring procedures will be considered. This will be an informal, off-the-record conference in its format. The California Independent System Operator staff is expected to present an example of a market monitoring plan for discussion. The California Power Exchange also is expected to propose principles to be used in developing a market monitoring plan and may also present an example of a plan. These proposals will be made available for review in advance on the conference of the Internet websites of these entities (*www.caiso.com* and *www.calpx.com*). Any party who would like to propose principles to govern the development of a market monitoring plan or an example of a plan is invited to do so but should make the proposal available to the parties in advance of the conference.

The conference will begin at 9:30 a.m. at 888 First Street, NE., Washington DC in the Commission room, Room 2C. Any questions concerning the conference should be directed to Scott Miller at (202) 208–2171 or Andra Wolfman at (202) 208–2097.

David B. Boergers,

Secretary.

[FR Doc. 01–1755 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–477–000, RP01–18–000 and RP01–81–000]

Tennessee Gas Pipeline Company; Notice of Change of Location of Technical Conference

January 16, 2001.

Take notice that the technical conference scheduled for Tuesday, January 23, 2001, at 10:00 am, in the above-captioned proceedings will be held at the Holiday Inn On the Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–1753 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice

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: January 24, 2001, 10 a.m.

PLACE: Room 2C, 888 First Street, NE. Washington, DC 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.

758th—Meeting January 24, 2001 Regular meeting (10 a.m.)

Consent Agenda—Markets, Tariffs and Rates—Electric

CAE–1.
- Docket# ER01–513, 000, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, Sithe Wyman LLC, Sithe Mystic LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Sithe Power Marketing, L.P and Sithe Power Marketing, INC.

CAE–2.
- Docket# ER01–592, 000, Western Resources, Inc.
- Other#s ER01–615, 000 ,Public Service Company of New Mexico

CAE–3.
- Docket# ER01–123, 000, Illinois Power Company

CAE–4.
- Docket# ER01–563, 000, Conectiv Energy Supply, Inc. and Delmarva Power & Light Company
- Other#s ER00–1770, 002, Delmarva Power & Light Company, Conectiv Delmarva Generation, Inc., Atlantic City Electric Company, Conectiv Atlantic Generation, LLC and Conectiv Energy Supply, Inc.
- ER00–3322, 002, Delmarva Power & Light Company, Conectiv Delmarva Generation, Inc., Atlantic City Electric Company, Conectiv Atlantic Generation, LLC and Conectiv Energy Supply, Inc.

CAE–5.
- Docket# EC01–13, 000, Bangor Hydro-Electric Company and Emera Incorporated

CAE–6.
- Docket# ER97–3463, 001, Pennsylvania-New Jersey-Maryland Interconnection

CAE–7.
- Docket# ER99–2028, 001, PJM Interconnection, L.L.C.

CAE–8.
- Docket# ER99–3144, 003, Alliance Companies, American Electric Power Service Corporation on Behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company, the Detroit Edison Company, First Energy Corporation on Behalf of: the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company and Virginia Electric and Power Company
- Other# EC99–80, 003, Alliance Companies, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company, the Detroit Edison Company, First Energy Corporation on behalf of: the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company and Virginia Electric and Power Company
- EC99–80, 004, Alliance Companies, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company, the Detroit Edison Company, First Energy Corporation on behalf of: the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company and Virginia Electric and Power Company
- EC99–80, 005, Alliance Companies, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company, the Detroit Edison Company, First Energy Corporation on behalf of: the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company and Virginia Electric and Power Company
- ER99–3144, 004, Alliance Companies, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company, the Detroit Edison Company, First Energy Corporation on behalf of: the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company and Virginia Electric and Power Company
- ER99–3144, 005, Alliance Companies, American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, Consumers Energy Company, Detroit Edison Company, First Energy Corporation on behalf of: the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company and Virginia Electric and Power Company
- EC00–103, 000, Consumers Energy Company
- ER00–2869, 000, Consumers Energy Company

CAE–9.
- Docket# EC00–49, 002, Consolidated Edison, Inc. and Northeast Utilities

CAE–10.
- Docket# ER01–66, 001, Pacific Gas and Electric Company

CAE–11.
- Omitted

CAE–12.
- Docket# ER01–103, 000, Firstenergy Services, Inc.
- Other#s ER01–103, 001, Firstenergy Services, Inc.

CAE–13.
- Docket# EL01–13, 000, Duke Energy Corporation, Carolina Power & Light Company, South Carolina Electric & Gas Company and Gridsouth Transco, LLC

CAE–14.
- Docket# EL00–116, 000, Alliance for Municipal Power

CAE–15.
- Docket# ER93–150, 017, Boston Edison Company
- Other#s EL93–10, 010, Boston Edison Company

CAE–16.
- Docket# EC00–137, 000, Connecticut Light and Power Company, Western Massachusetts Electric Company, United Illuminating Company, Central Maine Power Company, Fitchburg Gas and Electric Light Company, New England Power Company, Public Service Company of New Hampshire, Dominion Resources, Inc., and Dominion Nuclear Connecticut, Inc.

CAE–17.
- Docket# ER00–1439, 002, Automated Power Exchange, Inc.
- Other#s ER00–1439, 001, Automated Power Exchange, Inc.

Consent Agenda—Markets, Tariffs and Rates—Gas

CAG–1.
Omitted
CAG–2.
Omitted
CAG–3.
Docket# RP01–196, 000, Venice Gathering System, L.L.C.
CAG–4.
Docket# RP01–177, 000, Cove Point LNG Limited Partnership
CAG–5.
Docket# RP01–205, 000, Southern Natural Gas Company
CAG–6.
Docket# RP96–383, 016, Dominion Transmission, Inc.
CAG–7.
Docket# PR00–12, 000, Louisiana Intrastate Gas Company, L.L.C.
CAG–8.
Docket# RP96–383, 017, Dominion Transmission, Inc.
CAG–9.
Docket# RP00–627, 001, Northern Natural Gas Company
CAG–10.
Docket# RP97–71, 021, Transcontinental Gas Pipe Line Corporation
Other#s RP97–71, 020, Transcontinental Gas Pipe Line Corporation
CAG–11.
Docket# RP96–272, 025, Northern Natural Gas Company
Other#s RP96–272, 021, Northern Natural Gas Company
CAG–12.
Docket# MG01–4, 000, El Paso Natural Gas Company
CAG–13.
Docket# MG00–10, 000, Northwest Pipeline Corporation
CAG–14.
Docket# MG00–1, 002, Clear Creek Storage Company, L.L.C.
CAG–15.
Docket# MG00–11, 000, Kern River Gas Transmission Company
CAG–16.
Docket# RP01–189, 000, Northern Nevada Industrial Gas Users v. Northwest Pipeline Corporation
CAG–17.
Omitted
CAG–18.
Omitted

Consent Agenda—Energy Projects—Hydro

CAH–1.
Docket# P–2069, 004, Arizona Public Service Company
CAH–2.
Docket# P–4632, 027, Clifton Power Corporation
CAH–3.
Omitted

Consent Agenda—Energy Projects—Certificates

CAC–1.
Docket# CP97–168, 005, Alliance Pipeline L. P.
CAC–2.
Docket# CP00–374, 000, Kinder Morgan Interstate Gas Transmission LLC
Other#s CP00–375, 000, K N Energy, a Division of Kinder Morgan, Inc.
CAC–3.
Omitted
CAC–4.
Omitted
CAC–5.
Docket# RP00–220, 001, Town of Neligh, Nebraska v. Kinder Morgan Interstate Gas Transmision, L.L.C. And K N Energy, a Division of Kinder Morgan, Inc.
Other#s RP00–220, 000, Town of Neligh, Nebraska v. Kinder Morgan Interstate Gas Transmission, L.L.C. And KN Energy, a Division of Kinder Morgan, Inc.
CAC–6.
Omitted
CAC–7.
Docket# CP99–241, 002, ANR Pipeline Company
CAC–8.
Docket# CP01–57, 000, Suncor Development Company
CAC–9.
Docket# CP00–166, 000, Williams Gas Pipelines Central, Inc.

Energy Projects—Hydro Agenda

H–1.
Reserved

Energy Projects—Certificates Agenda

C–1.
Reserved

Markets, Tariffs and Rates—Electric Agenda

E–1.
Reserved

Markets, Tariffs and Rates—Gas Agenda

G–1.
Reserved

David P. Boergers,

Secretary.

[FR Doc. 01–1961 Filed 1–18–01; 11:01 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

January 12, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communications was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at *http://www.ferc.fed/online/us/rims.htm* (call 202–208–2222 for assistance).

Exempt

1. EL00–62–013, 01–03–01, The Honorable Jack Reed.
2. EL00–95–000, 12–27–00, G. Richard Judd.
3. EL00–95–000, 01–05–01, Frank J. De Smidt.
4. EL00–95–000, 01–05–01, Gary L. Vyne.
5. EL00–95–000, 01–05–01, Sidney L. Stevens.
6. EL00–95–000, 01–05–01, Frank J. De Smidt.
7. EL00–95–000, 01–05–01, Curt Johnson.
8. EL00–95–000, 01–05–01, Gary Vyne.
9. RT01–75–000, 01–10–01, Russell L. Morris.
10. EL00–62–013, 01–10–01, The Honorable, Edward J. Markey, John Joseph Moakley, Barney Frank, Edward M. Kennedy, John Kerry, William D. Delahunt, John W. Olver, Michael E. Capuano, Richard E. Neal, James P.

McGovern, Martin T. Meehan, John F. Tierney.

David P. Boergers,

Secretary.

[FR Doc. 01–1578 Filed 1–19–01; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6934–7]

Gulf of Mexico Program—Management Committee Meeting

AGENCY: U.S. Environmental Protection Agency (US EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Management Committee (MC).

DATES: The MC meeting will be held on Tuesday, February 13, 2001 from 1:00 to 5:00 p.m. and on Wednesday, February 14, 2001 from 8:30 to 11:30 a.m.

ADDRESSES: The meeting will be held at the Hampton Inn, Two Via DeLuna, Pensacola Beach, Florida, 32561, (850)932–6800.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Federal Program and Budget Summary, Review Draft GMP Policy Review Board Recommendations for 2001, FY 2001 Workplan Overview and Implementation Status, Review Annual Report to National Aquatic Nuisance Species Task Force, Coastal America Update, Overview of Memorandum of Understanding developed by USGS/NOAA/EPA , Update on Mexico/United States Governors' Accord.

The meeting is open to the public.

Dated: January 11, 2001.

Gloria D. Car,

Designated Federal Officer.

[FR Doc. 01–1650 Filed 1–19–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6935–1]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology, Standing Committee on Sectors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The Environmental Protection Agency (EPA) is inviting nominations for membership on its National Advisory Council for Environmental Policy and Technology (NACEPT), Standing Committee on Sectors. The Agency is seeking qualified senior level decision makers from diverse stakeholder groups throughout the U.S. to be considered for appointments. Nominations will be accepted until close of business on February 15, 2001, and need to include a resume or short biography describing the qualifications of the nominee and the nominee's current mailing address, e-mail address and daytime telephone number.

ADDRESSES: Submit nominations to Ms. Kathleen Bailey, Designated Federal Officer, EPA, Office of the Administrator, Office of Policy, Economics and Innovation, Office of Business and Community Innovation, Sector Strategies Division, Mail Code 1808, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also e-mail nominations to *bailey.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues.

The Standing Committee on Sectors, a subcommittee of NACEPT, has existed for two years and provides a federal advisory forum from which the Agency can continue to receive valuable multi-stakeholder advise and recommendations on the use of industry sector-based approaches to environmental protection. The Standing Committee on Sectors and NACEPT recently endorsed the EPA Sector Program Plan 2001–2005, and provided EPA's Administrator with six additional recommendations to foster implementation of the Plan. The vision statement in the Plan is: ''EPA Leadership Enables Environmental Excellence by U.S. Industries—Over the next five years, better understanding and cooperation among industry, government, and citizen stakeholders will help large numbers of facilities in a variety of industrial sectors make continuous improvement toward environmental excellence. Stakeholder-supported environmental strategies for industry sectors will bring marked reductions in pollution, waste, environmental and human health impacts, and regulatory burden.'' The Sector Program Plan 2001–2005, and other relevant information is available on EPA's web site *www.epa.gov/sectors.*

We are accepting nominations for approximately 15–18 members. Criteria for selection will include the following:

—Representatives from workgroups of the Standing Committee on Sectors which have continuing projects, i.e. printing, petroleum, and metal finishing.

—Representatives from a broad range of EPA stakeholder groups which have an interest and experience in dealing with sector issues, e.g. business/industry, state/local/tribal governments, national and local environmental, environmental justice, and labor groups.

—Senior level representatives with decision-making authority for their organization.

—Representatives with experience working collaboratively with stakeholder groups in addition to their own.

Nominations will be accepted until close of business on February 15, 2001, and need to include a resume or short biography describing the qualifications of the nominee and the nominee's current mailing address, e-mail address, and daytime phone number. Nominees invited to participate will receive an invitation from EPA's Deputy Administrator.

For further information, please contact Ms. Kathleen Bailey, Designated Federal Officer, EPA, Office of the Administrator, Office of Policy, Economics and Innovation, Office of Business and Community Innovation, Sector Strategies Division, Mail Code 1808, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Phone: 202/260–3413; e-mail *bailey.kathleen@epa.gov.*

Kathleen Bailey,

Designated Federal Officer, NACEPT Standing Committee on Sectors.

[FR Doc. 01–1828 Filed 1–19–01; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6935–7]

Notice of Proposed NPDES General Permit for Discharges From the Coastal Subcategory of the Oil and Gas Extraction Point Source Category in Texas (TXG330000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft NPDES general permit.

SUMMARY: EPA Region 6 is proposing to reissue General NPDES Permit No. TXG330000 regulating discharges from oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category in Texas. Most of the requirements in this proposed permit are the same as in the previous permit having an effective date of October 21, 1993 and expiration date of October 21, 1998. The main differences between the previous permit and this proposed permit are: discharges from New Sources are authorized by this permit, there are changes in the requirements for treated waste water from drilling fluids/cuttings and dewatering effluent, and changes in the requirements for well treatment, completion and workover fluids. These permit requirement changes are the result of incorporating additional or more stringent requirements contained in effluent limitations guidelines for the Coastal Subcategory contained in 40 CFR part 435, subpart D.

Additionally, EPA Region 6 is proposing to reissue NPDES General Permit TXG290000, regulating produced water and produced sand discharges to coastal water in Texas, and combine that permit with NPDES General Permit TXG330000. Permit No. TXG330000 previously regulated all discharges from wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, except for produced water and produced sand. Combining these two permits will, thereby, allow regulation of all discharges from Coastal Subcategory wells in one permit. General Permit TXG290000 also regulated the discharge of produced water from wells in the Stripper and Offshore Subcategories which discharged into coastal waters of Texas. Regulation of that produced water will also be incorporated into General Permit TXG330000.

DATES: Comments on this proposed permit must be submitted by March 23, 2001.

ADDRESSES: Comments on this proposed permit should be sent to the Regional Administrator, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7191. Copies of the complete fact sheet and proposed permit may be obtained from Ms. Smith. The fact sheet and proposed permit can also be found on the Internet at http://www.epa.gov/earth1r6/6wq/6wq.htm. In addition, the current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advanced notice.

SUPPLEMENTARY INFORMATION:

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Operators of oil and gas wells in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in part I, section A.1 of this permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341). Those statutory provisions require that NPDES permits include effluent limitations requiring that authorized discharges: (1) Meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

Two types of technology-based effluent limitations must be included in the permit proposed here. With regard to conventional pollutants, *i.e.,* pH, BOD, oil and grease, TSS and fecal coliform, CWA section 301(b)(1)(E) requires effluent limitations based on ''best conventional pollution control technology'' (BCT). With regard to nonconventional and toxic pollutants, CWA section 301(b)(2)(A), (C), and (D) require effluent limitations based on ''best available pollution control technology economically achievable'' (BAT), a standard which generally represents the best performing existing technology in an industrial category or subcategory. BAT and BCT effluent limitations may never be less stringent than corresponding effluent limitations based on best practicable control technology (BPT), a standard applicable to similar discharges prior to March 31, 1989 under CWA 301(b)(1)(A).

National guidelines establishing BCT, BAT and New Source Performance Standards have been promulgated for discharges from facilities in the Coastal Subcategory of the Oil and Gas Extraction Point Source Category. The final rule for these guidelines was published in the **Federal Register** at 61 FR 66086 on December 16, 1996. These guidelines can also be found at 40 CFR part 435, subpart D. The current proposal is to reissue NPDES General Permit TXG330000 which was issued in the **Federal Register** at 58 FR 49126 with an effective date of October 21, 1993, and an expiration date of October 21, 1998. Additionally, NPDES General Permit TXG290000, regulating produced water and produced sand discharges to coastal waters in Texas, will be reissued and combined with NPDES General Permit TXG330000. General Permit TXG290000 had an effective date of February 8, 1995 and an expiration date of February 7, 2000. Since these expired permits were issued before the BCT and BAT guidelines were promulgated, BCT and BAT requirements were based on

best professional judgement. The current proposed permit incorporates the BCT, BAT and New Source Performance Standards from 40 CFR part 435, subpart D.

Changes From the Expiring Permit

Although the 40 CFR part 435, subpart D, requirements are mostly the same as those in the expiring permits which were derived using best professional judgement, requirements for several waste streams are more stringent. The proposed permit, therefore, incorporates those more stringent guidelines limits. Specifically, the discharge of well treatment, completion and workover fluids is now prohibited. In addition, the discharge of dewatering effluent from reserve pits which received drilling fluids and/or drill cuttings after January 15, 1997, is prohibited. Since the guidelines do not address reserve pits which did not receive drilling fluids and/or drill cuttings after January 15, 1997, the limits in the previous permit apply, with one exception. In the previous permit, the No Free Oil limit was to be measured by a visual sheen test with the option of using the static sheen test. Since the guidelines require the use of the static sheen test for all No Free Oil limits except for deck drainage, the No Free Oil requirement for the reserve pit dewatering effluent discharges and the formation test fluid discharges has been changed to use of the static sheen test only. The proposed permit also authorizes discharges from new source facilities, whereas, the expiring permit does not.

Summary of Proposed Permit Limitations

A. Drilling fluids—No Discharge.

B. Drill cuttings—No Discharge.

C. Produced water—No Discharge.

Exception: Facilities in the Stripper Subcategory located east of the 98th meridian whose produced water comes from the Carrizo/Wilcox, Reklaw or Bartosh formations in Texas and whose produced water does not exceed 3000 mg/l Total Dissolved Solids shall meet the following limits: 25 mg/l monthly average and 35 mg/l daily maximum for oil and grease.

D. Produced sand—No discharge.

E. Dewatering effluent—No Discharge.

Exception: Dewatering effluent from reserve pits which have not received drilling fluids and/or drill cuttings since January 15, 1997, shall meet the following limits:

Free oil—No Discharge as determined by the static sheen test

Oil and grease—15 mg/l daily maximum

TSS—50 mg/l daily maximum

TDS—3000 mg/l daily maximum, except for discharges to tidally influenced watercourses if the TDS of the treated reserve pit effluent does not exceed the TDS concentration of the receiving water at the point of discharge at the time of discharge.

COD—200 mg/l daily maximum

pH–6.0–9.0 Std. Units

Chlorides—500 mg/l daily maximum (discharges to inland areas) and 1000 mg/l daily maximum (discharges to tidally influenced water courses). Chloride concentration may exceed 1000 mg/l in tidally influenced watercourses (downstream of the upper limit of saltwater intrusion) if the chloride concentration of the treated reserve pit effluent does not exceed the chloride concentration of the receiving water at the point of discharge at the time of discharge.

Hazardous metals—The discharge must not contain concentrations of the substances classified as ''hazardous metals'' in excess of the levels allowed by TAC 319.21)

F. Deck drainage—No discharge of free oil as determined by the presence of a film or sheen upon or a discoloration of the surface of the receiving water (visual sheen).

G. Formation test fluids—No Discharge except to bays and estuaries where no chloride standards have been established.

Where discharges are allowed:

Free oil—No Discharge as determined by the static sheen test.

pH–6.0–9.0 Std. Units

H. Well treatment, completion and workover fluids—No Discharge.

I. Sanitary waste—

No floating solids

BOD5–45 mg/l daily maximum

TSS–45 mg/l daily maximum

Fecal coliform—200/100 ml daily maximum

J. Domestic waste—No Discharge of floating solids or garbage or foam.

K. Miscellaneous discharges: Desalinization unit discharge; blowout preventer fluid;uncontaminated ballast and bilge water; mud, cuttings and cement at the sea floor; boiler blowdown; excess cement slurry; diatomaceous earth filter media; uncontaminated water—Discharge of free oil is prohibited as determined by a visual sheen on the surface of the receiving water. Discharge is authorized only at times when visual sheen observation is possible. Discharge may occur at any time if the operator uses the static sheen method for detecting free oil.

Other Legal Requirements

A. State Certification

Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permit contains limitations intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with the Texas water quality standards and the corresponding implementation plan. The Region has solicited certification from the Railroad Commission of Texas.

B. National Environmental Policy Act

EPA's regulations at 40 CFR part 6, subpart F, which implement the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C 4331, *et seq.*, provide the procedures for carrying out the NEPA environmental review process for the issuance of new source NPDES permits. The purpose of this review process is to determine if any significant environmental impacts are anticipated by issuance of NPDES permits authorizing discharges from new sources. In order to make this determination, EPA has prepared an environmental assessment in accordance with 40 CFR 6.604. Based on this environmental assessment document, EPA has determined that there will be no significant impact as the result of issuing today's proposed permit adding coverage of discharges from new sources. EPA is, therefore, proposing to issue a Finding of No Significant Impact in accordance with 40 CFR part 6 procedures concerning adding new source coverage to this general permit.

C. Endangered Species Act

When EPA issued the previous Permit TXG330000, effective October 21, 1993, covering existing sources, but not New Sources, the United States Fish and Wildlife Service concurred with EPA's finding that the permit was unlikely to adversely affect any threatened or endangered species or its critical habitat. When EPA issued Permit TXG290000, effective February 8, 1995, the Service also concurred with EPA's finding that the permit was unlikely to adversely affect any threatened or endangered species or its critical habitat. As discussed previously in this

Fact Sheet, the proposed permit requirements are the same as, and in some instances more stringent than, those in the previous permit. Furthermore, the proposed limits are sufficiently stringent to assure state water quality standards will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region, therefore, finds that adding New Source coverage to the permit is also unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA is seeking written concurrence from the United States Fish and Wildlife Service and the National Marine Fisheries Service on this determination.

D. Magnuson-Stevens Fishery Conservation and Management Act

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth a new mandate to identify and protect important marine and anadromous fisheries habitats. The purpose of addressing habitat in this act is to further the goal of maintaining sustainable fisheries. Guidance and procedures for implementing these amendments are contained in National Marine Fisheries Service regulations (50 CFR 600.805–600.930). These regulations specify that any Federal agency that authorizes or proposes to authorize an activity which would adversely affect an Essential Fish Habitat is subject to the consultation provisions of the Manguson-Stevens Act. The Texas Coastal Subcategory areas covered by this general permit include Essential Fish Habitat designated under the Magnuson-Stevens Act.

Based on the prohibitions and limitations and other requirements contained in this proposed general permit, as well as the Essential Fish Habitat Assessment prepared for this permit reissuance, the Region finds that adoption of the proposed permit is unlikely to adversely affect Essential Fish Habitat. EPA is seeking written concurrence from the National Marine Fisheries Service on this determination.

E. Coastal Zone Management Act

The Coastal Zone Management Act and its implementing regulations (15 CFR part 930) require that any Federally licensed or permitted activity affecting the coastal zone of a state with an approved Coastal Zone management Program be consistent with that Program. EPA has concluded, based on the conditions, limitations and prohibitions of this permit that the discharges associated with this proposed permit are consistent with the Texas Coastal Management Program goals and policies. EPA has requested a consistency determination from the Texas Coastal Coordination Council.

F. Historic Preservation Act

Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

G. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

H. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

I. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As discussed below, the permit being proposed to be reissued is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Coastal Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by these permits. EPA Region 6 therefore concludes that the permits proposed today will not have a significant impact on a substantial number of small entities.

J. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, *e.g.,* UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law * * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA thinks it is unlikely that this proposed permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the proposed permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, ''small

governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition. The proposed permit issuance also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

Dated: January 8, 2001.

Sam Becker,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 01–1829 Filed 1–19–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

January 12, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 23, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0286.

Title: Section 80.302 Notice of discontinuance, reduction, or impairment of service involving a distress watch.

Form No.: N/A.

Type of Review: Extension of existing collection.

Respondents: Business or other for-profit, individuals or households, non-profit institutions, state and local governments.

Number of Respondents: 160.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 160 hours.

Total Annual Cost: 0.

Needs and Uses: The reporting requirement contained in Section 80.145 is necessary to ensure that the U.S. Coast Guard is timely notified when a coast station, which is responsible for maintaining a listening watch on a designated marine distress and safety frequency, discontinues, reduces or impairs its communications services. This notification allows the Coast Guard to seek an alternate means of providing radio coverage to protect the safety of life and property at sea or object to the planned diminution of service. The information is used by the U.S. Coast Guard district office nearest to the coast station. Once the Coast Guard is aware that such a situation exists, it is able to inform the maritime community that radio coverage has or will be affected and/or seek to provide coverage of the safety watch via alternate means. When appropriate the Coast Guard may file a petition to deny an application.

OMB Number: 3060–0361.

Title: Section 80.29 Change during license term.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-Profit Institutions; State, Local or Tribal Government.

Number of Respondents: 250.

Estimated Time Per Response: 1 hour

Total Annual Burden: 250 hours total annual burden.

Needs and Uses: The information is used by the FCC to update the coast and ship station license files and data base concerning current name and address of licensees. Information concerning changes in the names of vessels is also used to update the ITU List of Ship Stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–1756 Filed 1–19–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

January 12, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 23, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0634.

Title: Section 73.691 Visual Modulation Monitoring.

Form No.: n/a.

Type of Review: Extension of currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 20 (2 notifications per respondent); 6 letters.

Estimated Hours Per Response: 1.0 hours.

Frequency of Response: on occasion.

Cost to Respondents: $0.

Estimated Total Annual Burden: 46.

Needs and Uses: Section 73.691(b) requires TV stations to enter into the station log the date and time of the initial technical problems that make it impossible to operate a TV station in accordance with the timing and carrier level tolerance requirements. If this operation at variance is expected to exceed 10 consecutive days, a notification must be sent to the FCC. The licensee must also notify the FCC upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of normal operations within 30 days, a written request must be made to the FCC. The data is used by FCC staff to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–1757 Filed 1–19–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 5, 2001.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Frank D. Neese, Indianapolis, Indiana; to retain voting shares of First Community Bancshares, Inc., Bargersville, Indiana, and thereby indirectly retain voting shares of First Community Bank and Trust, Bargersville, Indiana.

Board of Governors of the Federal Reserve System, January 16, 2001.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 01–1656 Filed 1–19–01; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Printed Construction Cancellation of Medical Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage only the cut sheet version of the following Standard Form is cancelled: SF 519A, Medical Record—Radiologic Consultation Request/Report (NSN 7540–00–634–4161).

The 3-part set of the form (NSN 7540–00–634–4162) is still current and available from the Federal Supply Service.

DATES: Effective January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: January 5, 2001.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 01–1832 Filed 1–19–01; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Request for Applications for the National Community Centers of Excellence in Women's Health (CCOE) Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office on Women's Health.

Authority: This program is authorized by 42 U.S.C. 300u–2(a)(1), 300u–3, and 300u–6(e).

Purpose: To provide recognition and funding to community-based programs that unite promising approaches in women's health through the integration of the following *six components:* (1) Comprehensive health service delivery, (2) training for lay and professional health providers, (3) community-based research, (4) public education and outreach, (5) leadership development for women as health care consumers and providers, and (6) technical assistance to ensure the replication of promising models and strategies that coordinate and integrate women's health activities at the community level and improve health outcomes for underserved women. The National Community Centers of Excellence in Women's Health (CCOE) program is not for the development of new programs or to fund direct service but rather to integrate, coordinate, and strengthen linkages between activities/programs that are already underway in the community in order to reduce fragmentation in women's health services and activities.

The proposed CCOE program must address women's health from a women-centered, women-friendly, women-relevant, holistic, multi-disciplinary, cultural and community-based perspective. Information and services provided must be at the educational level and within the language and cultural context that are most appropriate for the individuals for whom the information and services are intended. Women's health issues are defined in the context of women's lives, including their multiple social roles and the importance of relationships with other people to their lives. This definition of women's health encompasses both mental and physical health (including oral health) and spans the life course.

The CCOE program will be supported through the cooperative agreement mechanism, to allow a collaborative relationship between the CCOEs and the

Department of Health and Human Services (DHHS) offices. The DHHS funding offices include the Office on Women's Health (OWH), the Office of Minority and Women's Health in the Bureau of Primary Health Care of the Health Resources and Services Administration, and the Office of Minority Health. These offices will provide the technical assistance and oversight necessary for the implementation, conduct, and assessment of program activities.

Specifically, the Federal Government will:

1. Participate in at least two annual meetings with the CCOE Center Directors in the Washington, DC area.
2. Participate in the development of a comprehensive national CCOE ''how-to manual.''
3. Review and approve the CCOEs'' local evaluations.
4. Participate in a national evaluation of the CCOE programs using guidance/measurements provided by the OWH.
5. Review and concur with project modifications.
6. Review the design of CCOE home pages.
7. Site visit CCOE facilities annually.
8. Review all quarterly and final progress reports.

The DHHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010. Emphasis will be placed on aligning CCOE activities and programs with the Healthy People 2010: Goal 2—eliminating health disparities due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation. More information on the Healthy People 2010 objectives may be found on the Healthy People 2010 web site: *http://www.health.gov/healthypeople.* The reference document entitled ''Healthy People 2010: Understanding and Improving Health'' is available for $9.00. Another reference is the Healthy People 2000 Review—1998–99. One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 458–4636 [DHHS Publication No. (PHS) 99–1256]. This document may also be downloaded from the NCHS web site: http://www.cdc.gov/nchs.

Program Goals

The goals of the CCOE program are to:

1. Reduce the fragmentation of services and access barriers that women encounter using a framework that coordinates and integrates comprehensive health services with research, training, education, and leadership activities in the community to advance women's health.
2. Create healthier communities with a more integrated and coordinated women's health delivery system targeted to underserved women.
3. Empower underserved women as health care consumers and decision-makers.
4. Increase the women's health knowledge base using community-based research that involves the community in identifying research areas that address the health needs, and respond to, issues of concern to underserved women.
5. Increase the number of health professionals trained to work with underserved communities and increase their leadership and advocacy skills.
6. Increase the number of young women who pursue health careers and also increase the leadership skills and opportunities for women in the community.
7. Spread the successes, through technical assistance, of model women's health program strategies and new innovations to communities across the country that may be interested in replicating the model.
8. Eliminate health disparities for women who are underserved due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation.

Background

The concept for the CCOE program is based on the National Centers of Excellence in Women's Health (CoE) program. The CoEs have been functioning in academic health centers since 1996. The unique feature of the CoE program has been the way it has brought together the disparate set of women's health activities that take place in academic health centers: linking together women's health research, medical education, clinical services, community outreach, and leadership development for women in academic medicine to create a more dynamic and informed system of care. The primary role of the CoEs has been to unite women's health activities and programs, promote multi-disciplinary and cross-departmental collaborations, and institutionalize a more integrative approach to women's health in academic health centers. The success of the CoE model has been rooted in this integrative approach.

The intent of the National Community Centers of Excellence in Women's Health (CCOE) program is to integrate, coordinate, and strengthen linkages between programs/activities that are already underway in the community to reduce fragmentation in women's health services and activities. Like the CoE program, the CCOE program must use an integrative approach that focuses on linking existing activities, rather than creating new ones, using the community-based organization as the nucleus for operationalizing the new model. The technical assistance component will enable the lessons learned from this unique model to be replicated in other communities around the country.

As noted in Healthy People 2010, which outlines the health goals for our Nation, most successful community health initiatives involve multiple disciplines and interventions, linking community strengths and resources so that the whole is indeed greater than the sum of its parts. The CCOE program will link community resources that address women's health activities and disciplines to increase awareness/knowledge and to advance women's health efforts more efficiently.

Eligible Applicants

The CCOE applicants must be a public or private nonprofit community-based hospital, community health center, or community-based organization serving underserved women. Community health centers funded under Section 330 of the Public Health Service Act are encouraged to apply. All applicants receiving Section 330 funding must identify themselves as recipients of these funds in the Background section of the application and by checking the appropriate response on the OWH Project Profile form. Community entities/organizations that have alliances, partnerships, networks with, or have other affiliations with an academic health center are also eligible to apply for a CCOE grant as long as the community entity/organization has a leading management role in the activity and maintains control of all funding. Academic health centers and state and county health departments are not eligible for funds under this announcement.

To ensure a wide geographic distribution of the Center of Excellence in Women's Health model, applications will be accepted from organizations in all of the American States and Territories except those that already have a National Center of Excellence in Women's Health (CoE) program or a National Community Center of Excellence in Women's Health (CCOE) program. Thus, applications will not be accepted from programs in the following states: AZ, CA, IL, IN, LA, MA, MI, MO, NC, NY, PA, PR, WA, and WI. Preference will be given to DHHS regions that do not have a CCOE or a

CoE program and to programs proposed to be implemented in medically underserved areas, enterprise communities, and empowerment zones.

Deadline

To be considered for review, applications must be received by May 1, 2001. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications that do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts

Applications must be prepared using Form PHS 5161–1 (Revised June 1999). Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed in writing to Ms. Barbara James, CCOE Program Director, Division of Program Management, Office on Women's Health, Parklawn Building, Room 16A–55, 5600 Fishers Lane, Rockville, MD 20857, e-mail: bjames1@osophs.dhhs.gov.

Technical assistance on budget and business aspects of the application may be obtained from Ms. Karen Campbell, Acting Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockville, MD 20852, telephone: (301) 594–0758.

Completed applications also should be submitted to: Ms. Karen Campbell, Acting Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockwall II Building, Room 1000, 5515 Security Lane, Rockville, MD 20852.

Availability of Funds

The Office on Women's Health anticipates making between 3 to 5 new awards in FY 2001. Awards of up to $150,000 total costs (direct and indirect) for a 12-month period will be made to up to 5 competing applicants. However, the actual number of awards made will depend upon the amount of funds available for the CCOE program.

Period of Support

The start date for the cooperative agreement will be September 30, 2001. Support may be requested for a total project period not to exceed 5 years. Noncompeting continuation awards of up to $150,000 (total cost) per year will be made subject to satisfactory performance and the availability of funds.

Use of Grant Funds

Project Requirements

A CCOE program must: (1) Develop and/or strengthen a framework to bring together a comprehensive array of services for women; (2) develop promising strategies to train a cadre of health care providers capable of addressing issues at the community level that impact underserved women's health needs; (3) develop strategies to prevent and/or reduce illness or injuries that appear controllable through individual knowledge and behavior; (4) conduct community-based research in women's health; (5) enhance public education and outreach activities in women's health with an emphasis on prevention and/or reduction of illness or injuries that appear controllable through increased knowledge that leads to a modification of behavior; (6) promote leadership/career development for women in the health professions and women/girls in the community; (7) demonstrate an ability to foster the transfer of lessons learned to other communities interested in improvements in women's health; (8) evaluate their program; and (9) participate in a national evaluation of the CCOE program. A CCOE program may develop outreach and education materials, training programs, and leadership development activities/materials. Award recipients must also, with input from community representatives, put into place and track a set of measurable objectives for improving health outcomes and decreasing health disparities for underserved women in the community. In addition, the CCOE program must contribute to the development of a comprehensive national CCOE ''how-to manual'' by submitting, as part of their annual report, a section on steps taken to implement each component of the CCOE program, a discussion of the effectiveness of the implementation strategy(ies) and how measured, and the impact of the program on the targeted community/population. A draft manual will be developed and made available to other organizations interested in establishing a CCOE program. The OWH plans to publish a final ''how-to manual'' near the end of the third cycle of funding for the CCOE program.

At a minimum, each CCOE clinical care center must be a physically-identifiable space, within the CCOE facility(s), for the delivery of comprehensive health care for women only. The CCOE clinical care center must have permanent signage and initially, at least 50 percent of the facility's space and 50 percent of the operational hours must be devoted to women-friendly, women-centered, women-relevant care delivered from a multidiscliplinary, holistic, and culturally and linguistically appropriate perspective. The CCOE clinical care center must also have a schedule and procedures for identifying and counting the women served by the CCOE and for tracking the cost of services provided to women who receive care through the CCOE program.

Use of Funds

A majority of the funds from the CCOE award must be used to support staff and efforts aimed at coordinating and integrating the major components of the CCOE program. The Center Director, or the person responsible for the day-to-day management of the CCOE program, must devote at least a 50 percent level of effort to the program. Additionally, 25 percent of the funds must target efforts to foster the transfer of lessons learned/successful strategies from the CCOE program (technical assistance). These may include either process-based lessons (*i.e.,* How to bring multiple community partners together) or outcomes-based lessons (*i.e.,* How to increase diabetes screening and control through improved outreach, education, and treatment). The CCOEs must foster the replication of promising models from their sites through activities such as showcasing them at meetings and workshops; providing direct technical assistance to other communities; participating in the development of national replication guides/materials; and providing technical assistance to health professionals, directly or through their professional organizations, interested in working with underserved women in the community. Applicants must provide a plan for how they will provide technical assistance in the first year. They will be expected to identify at least one sustained interaction with another community, beginning no later than 6 months after receipt of the CCOE award, and provide materials for the development of a manual that describes how to link, coordinate, and partner within the community to form the CCOE infrastructure.

Funds may be used for personnel, consultants, supplies (including screening, education, and outreach supplies), and grant related travel. Items costing less than $5,000 are considered to be supplies. Funds may not be used for construction, building alterations, equipment, medical treatment, or renovations. All budget requests must be justified fully in terms of the proposed CCOE goals and objectives and include a computational explanation of how costs were determined.

The CCOE Center Directors will meet twice a year in the Washington metropolitan area. The CCOE's budget should include a request for funds to pay for the travel, lodging, and meals for the first Center Directors' meeting of each year. The first meeting is usually held between mid-October and mid-December. The OWH will pay the travel and other expenses associated with the second annual CCOE meeting.

Criteria for Evaluating Applications

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete, arrive after the deadline, or from states that already have a CCOE or a CoE program will be returned without review or comment. Accepted applications will be reviewed for technical merit in accordance with DHHS policies. Applications will be evaluated by a technical review panel composed of experts in the fields of program management, community service delivery, community outreach, health education, community-based research, and community leadership development. Consideration for award will be given to applicants that best demonstrate progress and/or plausible strategies for eliminating health disparities through the integration of services, community-based research, education, training, leadership/career development, and technical assistance to other communities. Applicants are advised to pay close attention to the specific program guidelines and general instructions in the application kit and to the definitions provided.

Application Requirements

Each applicant for a cooperative agreement grant funded under this CCOE announcement must, at a minimum:

1. Present a plan to integrate all six components of the CCOE program by the end of the first year of funding, although only four components have to be in place at the time the application is submitted. The challenge of the CCOE model is to stretch the ''medical health care model'' and ''think out of the box'' about ways to improve the health status of underserved women. Applicant are encouraged to be creative in suggesting ways to increase integration among the CCOE components.

2. Develop a CCOE advisory board or ensure that their already established advisory board is included in the decision-making process for CCOE program development, identification of community-based research questions, and formulation of CCOE policies. Applicants should also ensure that the advisory board includes representative(s) from their community partners.

3. Be a sustainable organization with an established network of partners capable of providing coordinated and integrated women's health services in the targeted community. The network of partner organizations must have the capability to coordinate and provide comprehensive, seamless health services for women and empower them with community-based women's health research information that addresses issues of particular concern to the women, teaching/training opportunities in women's health, leadership opportunities for community women in health, and community outreach/education activities in women's health to improve the health status of women in the community. The applicant will need to define the components of comprehensive care, demonstrate that they are culturally, linguistically, and gender appropriate, and show that they have a clear and sustainable framework for providing those services.

4. Have an established clinical care center/facility, an operating public educational/outreach program, and a community identified as the recipient of technical assistance at the time the application is submitted. A time line and plans for phasing in the remaining CCOE components by the end of Year 1 must be described in detail in the application.

5. Demonstrate the ways in which the organization and the care that are coordinated through its partners are women-focused, women-friendly, women-relevant, and sensitive to the importance of patient/provider communication/relationships for medically underserved women of all ages. The care that is coordinated through this organization must be focused on health promotion, disease prevention, and treatment.

6. Detail/specify the roles and resources/services that each partner organization brings to the program, the duration and terms of agreement as confirmed by a signed agreement between the applicant organization and each partner, and describe how the partner organizations will operate within the CCOE structure. The partnership agreement(s) must name the individual who will work with the CCOE program, describe their function, and state their qualifications. The documents, specific to each organization (form letters are not acceptable), must be signed by individuals with the authority to represent the organization (e.g., president, chief executive officer, executive director) and submitted as part of the grant application.

7. Describe in detail plans for the local evaluation of the CCOE program and when and how information obtained from the evaluation will be used to enhance the CCOE program. The applicant most also indicate their willingness to participate in a national evaluation of the CCOE program to be conducted under the leadership of the OWH.

8. Describe in detail the planned community-based research and the research methodology/procedure. Applicants may: (a) Propose original patient-oriented research; (b) enter into a formal agreement with institutions conducting population-based research to facilitate women's entry into clinical trial(s)/patient-oriented research; (c) participate in the national evaluation of the CCOE program (required of all awardees); (d) link with organizations conducting community-based research; and/or (e) propose other creative research projects. To satisfy the community-based research component of the CCOE program, all applicants must undertake at least two of the research activities listed above, in addition to the required participation in the national CCOE evaluation.

Application Review Criteria

The technical review of applications will consider the following factors:

Factor 1: Implementation Plan—45%

This section must discuss:

1. Appropriateness of the existing community resources and linkages established to deliver coordinated women's services to meet the requirements of the CCOE program.

2. Appropriateness of proposed approach, component integration, and specific activities described to address each element of the National Community Center of Excellence in Women's Health program including: (a) Comprehensive women's health services, (b) outreach and education, (c) training for professional and lay health

care workers serving underserved women, (d) community-based research that involves the community in substantive roles/ways, (e) leadership/career development for women providers, and women/girls in the community across the life span, and (f) technical assistance-the ability to train others in lessons learned and replication of successful strategies. Although all components of the CCOE do not have to be in place/operational at the time the application is submitted, the applicant must discuss/describe the resources available to support each component, time lines and plans for phasing in each component, and the relationship of each component to the overall goals and objectives of the CCOE program.

3. Soundness of evaluation objectives for measuring program effectiveness and changes in health outcomes.

4. Willingness to participate in the national CCOE evaluation.

5. Willingness to contribute to the development of a comprehensive national CCOE ''how-to manual.''

Factor 2: Management Plan—15%

Applicant organization's capability to manage the project as determined by the qualifications of the proposed staff or requirements for ''to be hired'' staff, proposed staff level of effort, management experience of the lead agency and the experience, resources and role of each partner organization as it relates to the needs and programs/activities of the CCOE program, diversity of the CCOE staff as it relates to and reflects the community and populations served, and integration of the advisory board into the CCOE activities.

Factor 3: Evaluation Plan—10%

A clear statement of program goal(s) and thoroughness, feasibility and appropriateness of the local CCOE evaluation design, data collection plan, analysis of results, and procedures to determine if program goals are met. A clear statement of willingness to be involved actively in the national CCOE evaluation.

Factor 4: Technical Assistance—10%

Plans for the provision of technical assistance and the potential for replication of the CCOE model in similar populations and communities. The plan must include justification for the community selected and a detailed discussion of how the applicant will sustain interaction with the community. Technical assistance to the selected community must begin no later than 6 months after receipt of the CCOE award.

Factor 5: Objectives—10%

Merit of the objectives outlined by the applicant to address the CCOE program discussed in the program goals section in a way relevant to the targeted community needs and available resources. Objectives must be measurable and attainable within a stated time frame.

Factor 6: Background—10%

Adequacy of demonstrated knowledge of systems of health care for underserved women at the local level; demonstrated need within the proposed local community and target population of underserved women; demonstrated support and established linkages in place to operate a fully functional CCOE program; demonstrated access to medically underserved women; and documented past efforts/activities outcome with underserved women.

Award Criteria

Funding decisions will be made by the Office on Women's Health, and will take into consideration the recommendations and ratings of the review panel, program needs, geographic location, stated preferences, and the recommendations of DHHS Regional staff. A pre-site visit, conducted by DHHS regional staff, will be scheduled prior to the award of a grant with all applicants with scores in the funding range. The purpose of the visit will be to assess the applicants readiness to implement a CCOE program.

Organization of Application

Applicants are required to submit an original ink-signed and dated application and 15 photocopies. All pages must be numbered clearly and sequentially beginning with the Project Profile. The application must be typed double-spaced on one side of plain 8½″ × 11″ white paper, using at least a 12 point font, and contain 1″ margins all around.

The Project Summary and Project Narrative must not exceed a total of *25* double-spaced pages, excluding the appendices. The original and each copy must be stapled and/or otherwise securely bound. The application should be organized in accordance with the format presented in the Program Guidelines. An outline for the minimum information to be included in the ''Project Narrative'' section is presented below.

I. Background
- A. Local CCOE purpose(s) and goals
- B. Section 330 funding
- C. Local CCOE program objectives
  1. Tied to program goal(s)
  2. Measurable with time frame
  3. Elements identified in Factor 5: Objectives
- D. CCOE organization charts that include partners and a discussion of the resource being contributed to the CCOE, partners, personnel and their expertise and how their involvement will help achieve the CCOE program goals

II. Implementation Plan (Approach to the establishment of the CCOE program)
- 1. Components in place and plans with a timetable for phasing in the other CCOE components
- 2. Partnerships and referral system/follow up
- 3. Community-based research
- 4. National CCOE ''how-to manual''
- 5. Elements identified in Factor 1: Implementation Plan

III. Management Plan
- A. Key project staff
- B. To-be-hired staff and their qualifications
- C. Staff responsibilities
- D. Management experience of the lead agency and partners as related to their role in the CCOE program
- E. Advisory board
- F. Elements identified in Factor 2: Management Plan

IV. Local CCOE Evaluation Plan
- A. Purpose
- B. Design/methodology
- C. Use of results to enhance programs
- D. Elements identified in Factor 3: Evaluation Plan

V. Technical Assistance/Replication Strategy
- A. Identification of Technical Assistance community
- B. Reason for selection of Technical Assistance community
- C. Technical Assistance plans/strategies/time line
- D. Plans for sustaining Technical Assistance
- E. Elements identified in Factor 4: Technical Assistance

Appendices
- A. Progress Report Outline
- B. Memorandums of Agreement/Understanding/Partnership Letters
- C. Required Forms (Assurance of Compliance Form, etc.)
- D. Other Attachments

Definitions

For the purposes of this cooperative agreement program, the following definitions are provided:

Clinical Care Center: At a minimum, each CCOE clinical care center must be a physically-identifiable space, within the CCOE facility(s), for the delivery of comprehensive health care for women only. The CCOE clinical care center must have permanent signage and initially, at least 50 percent of the facility's space and 50 percent of the operational hours must be devoted to women-friendly, women-centered, women-relevant care delivered from a multidisciplinary, holistic, and culturally and linguistically appropriate perspective. The CCOE clinical care

center must also have a schedule and procedures for identifying and counting the women served by the CCOE and for tracking the cost of services provided to women who receive care through the CCOE program.

Community-based: The locus of control and decision-making powers are located at the community level, representing the service area of the community or a significant segment of the community.

Community-based organization: Public and private, nonprofit organizations that are representative of communities or significant segments of communities.

Community-based research: Community members work with researchers to help determine research issues, shape the research process/objectives, and bring research results back to the community. Community members' participation maximizes the potential for exchange in knowledge and implementation of research findings. The shared goal is to maintain scientific integrity in the research methods, while also incorporating the skills, knowledge, and strengths of the participants/beneficiaries of the research. There is an emphasis on ensuring that research results are translated into practice and communicated back to the community.

Community health center: A community-based organization that provides comprehensive primary care and preventive services to medically underserved populations. This includes but is not limited to programs reimbursed through the Federally Qualified Health Centers mechanism, Migrant Health Centers, Primary Care Public Housing Health Centers, Healthcare for the Homeless Centers, and other community-based health centers.

Comprehensive women's health services: Services including, but going beyond traditional reproductive health services to address the health needs of underserved women in the context of their lives, including a recognition of the importance of relationships in women's lives, and the fact that women play the role of health providers and decision-makers for the family. Services include basic primary care services; acute, chronic, and preventive services; mental and dental health services; patient education and counseling; promotion of healthy behaviors (like nutrition, smoking cessation, substance abuse services, and physical activity); and enabling services. Ancillary services are also provided such as laboratory tests, X-ray, environmental, social referral, and pharmacy services.

Coordinated care: The formal linkages, case management services, partnering arrangements, and patient advocate support that enable better coordination of women's health resources and help underserved women to navigate systems to obtain the comprehensive health services they need. Community-based organizations are expected to coordinate with State and local health departments, nonprofit organizations, academic institutions, or other local organizations in the community as appropriate.

Culturally competent: Information and services provided at the educational level and in the language and cultural context that are most appropriate for the individuals for whom the information and services are intended.

Cultural perspective: Recognizes that culture, language, and country of origin have an important and significant impact on the health perceptions and health behaviors that produce a variety of health outcomes.

Enabling services: Services that help women access health care, such as transportation, translation, child care, and case management.

Healthy People 2010: A set of national health objectives that outlines the prevention agenda for the Nation. Healthy People 2010 identifies the most significant preventable threats to health and establishes national goals for the next ten years. Individuals, groups, and organizations are encouraged to integrate Healthy People 2010 into current programs, special events, publications, and meetings. Businesses can use the framework, for example, to guide worksite health promotion activities as well as community-based initiatives. Schools, colleges, and civic and faith-based organizations can undertake activities to further the health of all members of their community. Health care providers can encourage their patients to pursue healthier lifestyles and to participate in community-based programs. By selecting from among the national objectives, individuals and organizations can build an agenda for community health improvement and can monitor results over time.

Holistic: Looking at women's health from the perspective of the whole person and not as a group of different body parts. It includes mental as well as physical health.

Integrated: In the CCOE context, the bringing together of the numerous spheres of activity (6 CCOE components) that touch women's health, including clinical services, research, health training, public health outreach and education, leadership development for women, and technical assistance. The goal of this approach is to unite the strengths of each of these areas, and create a more informed, less fragmented, and efficient system of women's health for underserved women that can be replicated in other populations and communities.

Lifespan: Recognizes that women have different health and psycho-social needs as they encounter transitions across their lives and that the positive and negative effects of health and health behaviors are cumulative across a woman's life.

Multi-disciplinary: An approach that is based on the recognition that women's health crosses many disciplines, and that women's health issues need to be addressed across multiple disciplines, such as adolescent health, geriatrics, cardiology, mental health, reproductive health, nutrition, dermatology, endocrinology, immunology, rheumatology, dental health, etc.

Social Role: Recognizes that women routinely perform multiple, overlapping social roles that require continuous multi-tasking.

Sustainability: An organization's or program's staying power: The capacity to maintain both the financial resources and the partnerships/linkages needed to provide the services demanded by the CCOE program. It also involves the ability to survive change, incorporate needed changes, and seize opportunities provided by a changing environment.

Underserved Women: In the context of the CCOE model, women who encounter barriers to health care that result from any combination of the following characteristics: Poverty, ethnicity and culture, mental or physical state, housing status, geographic location, language, sexual orientation, age, and lack of health insurance/under-insured.

Women-centered/women-focused: Addressing the needs and concerns of women (women-relevant) in an environment that is welcoming to women, fosters a commitment to women, treats women with dignity, and empowers women through respect and education. The emphasis is on working with women, not for women. Women clients are considered active partners in their own health and wellness.

Reporting and Other Requirements

General Reporting Requirements

In addition to those listed above, a successful applicant will submit an annual progress report that includes a summary of the local CCOE evaluation and a discussion of steps taken to

implement each component of the CCOE program and the impact of the program on the targeted community/population, an annual Financial Status Report, a final Progress Report, a final Financial Status Report, and a technical assistance documentation report in the format established by the Office on Women's Health, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR Part 74, Subpart J and Part 92.

Additionally, a successful applicant will submit quarterly progress reports. An original and two copies of the quarterly progress report must be submitted by January 1, April 1, July 1, and October 1. The last quarterly report will serve as the annual progress report and will describe all project activities for the entire year. The annual progress report is submitted by October 1 of each year, with the exception of the last year of the award when the report will be due by September 30.

Provision of Smoke-free Workplace and Nonuse of Tobacco Products by Recipients of PHS Grants

DHHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprized on proposed health services grant applications submitted by community-based non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate state or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office on Women's Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. The due date for State process recommendations is 60 days after the application deadline. The Office on Women's Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.)

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance Number is 93.290.

Dated: January 16, 2001.

David Satcher,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 01–1807 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–17–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of the Health

Part N, national Institutes of health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and human Services (40 FR 22859, May 27, 1975, as amended most recently and 65 FR 20477, April 2000, and redesignated from Part HN as Part N at 60 FR 56606, November 9, 1995) is amendment as set forth below to reflect the establishment of the Center on Minority Health and Health Disparities (NCMHD), National Institutes of Health. the Public health Service Act (42 U.S.C. 281 *et seq.*) as amended by P.L. 106–525, the Minority Health and Health Disparities research and Education Act of 2000, provides the authorities of the center and abolishes the Office of research on Minority Health (ORMH) within the Office of the Director, NIH. The functions and resources of the ORMH are transferred to the newly established NCMHD.

Section N–B, Organization and Functions, is amended as follows: (1) After the heading National Center for Complementary and Alternative Medicine (ND, formerly HND), insert the following:

National Center on Minority Health and Health Disparities (NE, formerly HNE), (1) Advises the NIH director and Institute and Center ((C) directors on the development of NIH-wide policy issues related to minority health disparities research, research on other health disparities, and related research training and serves as principal liaison with other agencies of the PHS, DHHS, and Federal Government; (2) develops, in consultation with the NIH Director, IC directors, and the advisory council, a comprehensive strategic plan that identifies and establishes objectives, priorities, budgets, and policy statement governing the conduct and support of all NIH minority health disparities research, research on other health disparities, and related research training activities; (3) evaluates NIH minority health disparities research programs and other health disparities research programs that are carried out by the ICs; (4) administers funds for the support of minority health disparities research and other health disparities research, through grant-making and through leveraging the programs of the ICs; (5) provides staff support to the NCMHD Advisory Council and tans-NIH coordination Committee for minority health disparities research and other health disparities research at NIH; (6) develops and maintains a Health Disparities Information (HDI) data base on intramural and extramural activities of relevance to the Center's mission and prepares special or recurring reports as needed; (7) develops culturally appropriate strategies to assure that the public is informed about various diseases and conditions that affect racial and ethnic minorities and other ''health disparity populations'' and issues and related NIH research activities and advances; (8) informs the scientific and medical communities and other

Government agencies of NIH health disparities activities and involves them in efforts to expand and encourage minority health disparities research, research on other disparities, and related research training program; (9) promotes the growth and quality of minority health disparities research and research on other health disparities through improved resource allocation at the NIH, expanded collaboration among the NIH ICs and among academic institutions, improving the research infrastructure at minority serving institutions, and through the development of innovative programs such as a Centers of Excellence Program, a research endowment program, an extramural loan repayment program, and programs promoting Federal, State and local cooperation; (10) provides leadership in expanding the pool of experienced investigators in the areas of minority health disparities research and research on other health disparities; and (11) in consultation with the NIH Director, implements Title I of the Minority Health and Health Disparities Research and Education Act of 2000, as it relates to the NCMHD.

Office of the Director (NE1, formerly HNE1), (1) Plans, directs, coordinates, and evaluates the activities and programs of the NCMHD; (2) coordinates with the NIH Institutes and Centers and other Federal agencies on programs of relevance to the mission of the Center; (3) advises the NIH Director, the NIH Institutes and Centers, and others on matters relating to minority health disparities research, research on other health disparities, and related research training, including efforts to increase the participation of minority groups and subjects of clinical research; (4) plans and supervises the implementation and evaluation of administrative and management services and support to the programs and activities of the NCMHD; (5) directs and supervises the formulation, presentation, and execution of the Center's budget; (6) informs the scientific and medical communities and other Government agencies of NIH activities relevant to minority health disparities research and research on other health disparities and involves them in efforts to expand and encourage research and training programs in these areas.

Office of Finance and Administration (NE12, formerly HNE12). (1) Provides, secures, and negotiates regarding the resources and services needed for the operations of the Center, including the Office of the Director; (2) manages the Center's operational budget and performs a variety of management analysis functions; (3) assists in planning and formulating the Center's research budget and executes the budget; (4) implements a comprehensive program of personnel management services for the Center, within the authority delegated by the NIH Director; (5) provides leadership in the Center in the areas of computer information technology and in the use of computers as communication tools to include assisting in the development and monitoring of databases, in particular the Health Disparities Information (HDI) System, and monitors the development of the Center's website.

Office of Extramural Activities (NE13, formerly HNE13). (1) Provides staff support to the NCHMD Advisory Council, the congressionally authorized group that advises, assists, consults with, and make recommendations to the Center Director, and provides the second level of peer review of grant applications; (2) provides oversight for and/or coordinates scientific review activities with the staff of NCMHD programs and with the Center for Scientific Review, NIH and/or with offices of review within relevant NIH Institutes and Centers, as required; (3) provides policy direction and coordination for planning and executing initial scientific and technical reviews of applications for grants and contracts conducted within the Center, as required; (4) coordinates the identification and selection of qualified experts to serve on review committees and assists with the review of grant applications and contract proposals, as required; (5) serves as an information and coordination center for all grant applications and contract proposals pending review by the unit; (6) supervises the scientific review administrators for the initial scientific review of grant proposals reviewed within NCHMD; (7) maintains uniform policies and procedures governing technical review of grant applications and contract proposals within NCHMD; (8) provides administrative and technical support in the development, execution, and monitoring of grant and contract programs, as required; (9) provides oversight and direction for the grants management functions of the NCHMD; and (10) maintains liaison with grants and contracts management staffs in other Institutes and Centers, with central OD/NIH offices, grantees, and contractors.

Office of Communications and Public Liaison (NE14, formerly HNE14). (1) Disseminates information on scientific and policy developments related to the mission of the Center; (2) plans and implements a comprehensive information and communications program; (3) coordinates with the NIH Institutes and Centers on minority health disparities research and research on other health disparities for the purposes of serving as a clearinghouse and focal point for disseminating information on the goals and advances in these programs; (4) maintains liaison with the NIH Office of Communications and Public Liaison; (5) provides oversight for the maintenance of the Center's website; and (6) provides leadership and coordinates with the Division of Scientific Planning and Analysis on issues related to trans-NIH conferences and/or other conferences and workshops of relevance to the mission of the Center.

Office of Research Training and Capacity Building (NE15, formerly HNE15). (1) Provides leadership in implementing the trans-NIH strategic plan to improve the effectiveness of all NIH programs aimed at increasing minority participation in biomedical research; (2) develops and implements outreach and science education initiatives aimed at increasing the participating of underrepresented minorities in biomedical research; (3) develops and implements initiatives aimed at building health disparity research capacity at minority institutions, minority-serving institutions, and at designated centers of excellence; (4) develops and implements an extramural loan repayment program with a focus on expanding the cadre of clinical investigators engaged in minority health disparities research and research on other health disparities; and (5) creates innovative initiatives aimed at increasing underrepresented minority investigators' access to NIH funding opportunities.

Division of Research (NE2, formerly HNE2). (1) Advises the Center Director on matters relating to minority health disparities research and research on other health disparities, including enhancing the participation of underrepresented minorities in research; (2) advises the Center Director during the consultative process of establishing NIH-wide goals for minority health disparities research, research on other health disparities, research and training, and on the development of the trans-NIH health disparities strategic plan; (3) provides leadership in implementing the trans-NIH health disparities strategic plan to improve the effectiveness of all NIH programs aimed at increasing NIH-supported research on diseases and conditions that disproportionately affect racial and ethnic minorities and other

''health disparity groups,''; and (4) creates initiatives to enhance inclusion as well as targeted minority health disparities research and research on other health disparities.

Division of Community-Based Research and Outreach (NE3, formerly HNE3). (1) Develops and implements partnering initiatives to promote cooperation among Federal agencies, State, local, tribal, and regional public health agencies, and private entities in minority health disparities research and research on other health disparities as required by the Minority Health and Health Disparities Research and Education Act of 2000; (2) develops and implements a community-based research program for the National Institutes of Health with a focus on disease prevention, implementation of health messages in relevant racial and ethnic minority and disadvantaged communities, and elucidating barriers to effective health care, etc; and (3) coordinates with appropriate DHHS organizations and other Federal entities on programs of relevance to the mission of the Center.

Division of Scientific Planning and Policy Analysis (NE4, formerly HNE4). (1) Advises the Center Director regarding the analysis and evaluation of Center-supported programs, as requested; (2) represents the Center Director, as requested, on the trans-NIH Coordinating Committee during the consultative process of identifying annual trans-NIH priorities in regard to minority health disparities research, research training and capacity building, and research on other health disparities, including the allocation of resources in support of identified priorities; (3) provides program support for trans-NIH conferences and/or other conferences and workshops of relevance to the mission of the Center; (4) develops major policy and program recommendations, as requested by the Director, NIH, based on an evaluation of the status of support and accomplishments of NCMHD-supported programs; (5) conducts the Center's legislative liaison activities; and (6) serves as the clearinghouse and focal point for interpreting the goals and results of Center-supported research programs and projects for disseminating information to Congress and the Executive Branch.

Office of Scientific and Strategic Planning (NE42, formerly HNE42). (1) Coordinates, as requested, with the Center's Director on the development of a trans-NIH health disparities strategic plan; (2) assists and advises the Director in preparation for Congressional testimony and hearings and in the development of justifications for resource appropriations; (3) develops annual reports reflecting the status of trans-NIH implementation of initiatives, including executive orders, related to minority health disparities research and research on other health disparities, including those designed to enhance research and training capacity at minority and minority-serving institutions; and (4) conducts the Center's Freedom of Information and Privacy Act activities.

Office of Program Analysis and Data Management (NE43, formerly HNE43). (1) Coordinates, as required, with the Office of Scientific Planning, NCMHD, on the development of annual reports reflecting the status of trans-NIH implementation of initiatives, including executive orders, related to minority health disparities research and research on other health disparities, including those designed to enhance research and training capacity at minority and minority-serving institutions; (2) represents the Center, as requested, in the development, implementation, and monitoring of a trans-NIH coding system for identifying ''targeted'' and ''inclusion'' research and training initiatives as it relates to ''health disparity populations'' as well as identifying infrastructure and capacity building awards made to minority and minority-serving institutions; (3) collects and maintains data on trans-NIH programs and activities aimed at reducing and/or eliminating health disparities; (4) provides oversight for the development of the Health Disparities Information (HDI) System, a database for identifying and tracking all NIH-supported minority health disparities research, research on other health disparities, research training, and construction projects data; (5) acquires data and performs analyses for use in NCMHD planning and development; and (6) coordinates the presentation of the Center's plans and reports.

Delegations of Authority Statement: All delegations and redelegations of authority to offices and employees of NIH that were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: January 16, 2001.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 01–1808 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–15–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

A Survey of Pediatricians' Attitudes and Practices about Promoting Communication between Parents and Their Children about Sexuality and Sexual Risk—New—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC proposes to assess pediatricians' attitudes, beliefs, and practices regarding promotion of parent-child communication about sexuality and sexual risk, and barriers to offering sexual health counseling to parents. The survey will assess which services are currently offered by physicians (e.g., discussions, pamphlets, videos, referrals to educational programs); when and to whom physicians offer services; the barriers that prevent physicians from offering services; and the types of services pediatricians believe are feasible to offer. Results of this survey will be used to develop effective programs to help pediatricians facilitate communication between parents and children about sexuality and STD/HIV prevention. Increasing parent-adolescent communication about sexuality and STD/HIV is important because many adolescents are having unprotected sex at an early age, and although parent-adolescent communication has been found to be associated with lower sexual risk behavior among adolescents, many parents are not talking to their adolescents. Thus, strategies are needed to inform parents about the benefits of communication as a way to enhance their child's sexual health. Consistent with recommendations from the American Medical Association and the

American Academy of Pediatrics, physicians can play an important role in educating parents about ways to promote their child's sexual health. The total annual burden for this project is 300 hours.

Respondents	Number of respondents	Number of responses	Average hour burden per response
Pediatricians	900	1	20/60

Dated: January 16, 2001.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–1763 Filed 1–19–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1283]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 21, 2001.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling Regulations—21 CFR Parts 101, 102, 104, and 105 (OMB Control No. 0910–0381)—Extension

FDA regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory officials. Finally, certain regulations provide for the submission of food labeling petitions to FDA. FDA's food labeling regulations in parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (the FPLA) (15 U.S.C. 1453, 1454, and 1455) and of sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the act and the FPLA.

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.9(g)(9) also provides for the submission to FDA of requests for alternative approaches to nutrition labeling. Finally, § 101.9(j)(18) provides for the submission to FDA of notices from firms claiming the small business exemption from nutrition labeling.

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(b) provides the reference amount that is used for determining the serving sizes for baking powder, baking soda, and pectin. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate nonaerated reference food must be prepared to show FDA detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g) requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions to FDA to request changes in the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another ''reference'' food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the

percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. It also requires that when this comparison is based on an average of served foods, this information must be provided to consumers or regulatory officials upon request. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient content claims they have made for the foods they sell.

Section 101.14 provides for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth reporting and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavor. Section 101.30 specifies the conditions under which a beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. Section 101.36(f)(2) cross-references the provisions in § 101.9(g)(9) for the submission to FDA of requests for alternative approaches to nutrition labeling. Also, § 101.36(h)(2) cross-references the provisions in § 101.9(j)(18) for the submission of small business exemption notices.

Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruits, vegetables, and fish at the point of purchase, and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission of nutrient data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to FDA for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 cross-references requirements in other regulations for ingredient declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a petition requesting that FDA authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that FDA authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of the amount of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate per serving in the nutrition labeling of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the act be in writing and that a copy of the agreement be made available to FDA upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions.

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by Federal, State, or local government. Section 101.108 provides for the submission to FDA of a written proposal requesting a temporary exemption from certain requirements of §§ 101.9 and 105.66 for the purpose of conducting food labeling experiments with FDA's authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate shall include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross-references several labeling provisions in part 101 but contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods, infant foods, and certain foods represented as useful in reducing or maintaining body weight.

The disclosure and other information collection requirements in the above regulations are placed primarily upon manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

The purpose of the food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to FDA provide the basis for the agency to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable FDA to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the act or the FPLA.

In the **Federal Register** of October 10, 2000 (65 FR 60195), the agency requested comments on the proposed collection of information. The agency received several comments, none of which were relevant to the PRA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Sections and Parts	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours	Total Capital, Operating, and Maintenance Costs
101.3 and 101.22, and 102 and 104	17,000	1.03	17,500	0.5	8,750	0
101.4, 101.22, and 101.100, and 102, 104, and 105	17,000	1.03	17,500	1	17,500	0
101.5	17,000	1.03	17,500	0.25	4,375	0
101.9, 101.13(n), 101.14(d)(3), and 101.62, and 104	17,000	1.03	17,500	4	70,000	$1,000,000
101.9(g)(9) and 101.36(f)(2)	12	1	12	4	48	0
101.9(j)(18) and 101.36(h)(2)	10,000	1	10,000	8	80,000	0
101.10	265,000	1.5	397,500	0.25	99,375	0
101.12(b)	29	2.3	66	1	66	$39,600
101.12(e)	25	1	25	1	25	0
101.12(g)	5,000	1	5,000	1	5,000	0
101.12(h)	5	1	5	80	400	$400,000
101.13(d)(1) and 101.67	200	1	200	1	200	0
101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62	2,500	1	2,500	1	2,500	0
101.13(q)(5)	265,000	1.5	397,500	0.75	298,125	0
101.14(d)[2]	265,000	1.5	397,500	0.75	298,125	0
101.15	160	10	1,600	8	12,800	0
101.22(i)(4)	25	1	25	1	25	0
101.30 and 102.33	1,500	3.3	5,000	1	5,000	0
101.36	300	40	12,000	4	48,000	$15,000,000
101.42 and 101.45	72,270	1	72,270	0.50	36,135	0
101.45(c)	5	4	20	4	80	0
101.69	3	1	3	25	75	0
101.70	3	1	3	80	240	$400,000
101.77(c)(2)(ii)(D)	1,000	1	1,000	0.25	250	0
101.79(c)(2)(iv)	100	1	100	0.25	25	0
101.100[2]	1,000	1	1,000	1	1,000	0
101.105 and 101.100(h)	17,000	1.03	17,500	0.5	8,750	0
101.108	0	0	0	40	0	0
Total					996,869[1]	$16,800,000

[1]Due to a clerical error, the total that appeared in table 1 in the **Federal Register** of Tuesday, October 10, 2000 (65 FR 60195), was incorrect. Table 1 of this document contains the correct estimates.

[2]Sections 101.14(d)(2) and 101.100(d) were incorrectly cited in table 1 in the **Federal Register** of Tuesday, October 10, 2000 (65 FR 60195). Table 1 of this document contains the correct citations.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeepers	Total Annual Records	Hours per Record	Total Hours	Total Capital, Operating, and Maintenance Costs
101.12(e)	25	1	25	1	25	0

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN—Continued

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeepers	Total Annual Records	Hours per Record	Total Hours	Total Capital, Operating, and Maintenance Costs
101.13(q)(5)	265,000	1.5	397,500	0.75	298,125	0
101.14(d)(2)	265,000	1.5	397,500	0.75	298,125	0
101.22(i)(4)	25	1	25	1	25	0
101.100(d)(2)	1,000	1	1,000	1	1,000	0
101.105(t)	100	1	100	1	100	0
Total					597,400	0

These estimates are based on the document entitled ''Regulatory Impact Analysis of the Final Rules to Amend the Food Labeling Regulations,'' which is the agency's most recent comprehensive review of food labeling costs that published in the **Federal Register** of January 6, 1993 (58 FR 2927); agency communications with industry; and FDA's knowledge of and experience with food labeling and the submission of petitions and requests to the agency. Where an agency regulation implements an information collection requirement in the act or the FPLA, only any additional burden attributable to the regulation has been included in FDA's burden estimate.

No burden has been estimated for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, no burden has been estimated for information that is disclosed to third parties as a usual and customary part of a food producer's normal business activities. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

Dated: January 12, 2001.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 01–1567 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1571]

Enrofloxacin for Poultry; Opportunity for Hearing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Veterinary Medicine (CVM), is revising a notice of opportunity for hearing (NOOH) that published in the **Federal Register** on October 31, 2000 (65 FR 64954). After publishing the NOOH, CVM determined that some estimates of numbers of human campylobacteriosis cases and fluoroquinolone-resistant *Campylobacter* cases provided by a risk assessment used as a reference in the NOOH were incorrect. CVM has revised the risk assessment and is revising the estimates that were provided in the NOOH. This notice also extends the deadline for the sponsor to submit data and analysis upon which a request for a hearing relies. Other interested persons may submit comments on the NOOH before the deadline.

DATES: Submit all written data and analysis upon which a request for a hearing relies and other written comments by February 21, 2001.

ADDRESSES: Data and analysis and other comments are to be identified with Docket No. 00N–1571 and must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

The revised risk assessment entitled ''The Human Health Impact of Fluoroquinolone Resistant *Campylobacter* Attributed to the Consumption of Chicken, Revised: January 5, 2001'' (hereafter referred to as Ref. 2a) is available electronically at http://www.fda.gov/cvm/antimicrobial/antimicrobial.html and in this docket.

FOR FURTHER INFORMATION CONTACT: Linda Tollefson, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–2950.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 31, 2000 (65 FR 64954), CVM published an NOOH proposing withdrawal of the approval of a new animal drug application (NADA) for the use of the fluoroquinolone enrofloxacin in poultry. The NOOH included estimates that were taken from Ref. 2 of the October 31, 2000, NOOH, the risk assessment entitled ''Human Health Impact of Fluoroquinolone Resistant *Campylobacter* Attributed to the Consumption of Chicken, October 18, 2000.'' After publication of the NOOH, CVM determined that two of the cell references in the risk assessment were mislabeled and as a result, the model outputs were incorrect. CVM has revised the risk assessment to correct the cell references. Because CVM needed to make these corrections to the risk assessment, it has also incorporated the final FoodNet data for 1999 into the risk assessment and has made other related changes. CVM is revising the NOOH to reflect the changes in the risk assessment and to add the revised risk assessment Ref. 2a to the list of references in the NOOH. CVM does not believe that these revisions in any way alter the underlying basis of the NOOH.

The following section describes the location and revisions to the October 31, 2000, NOOH.

II. Revisions

Based on the revisions to the risk assessment, CVM is revising the estimates in the October 31, 2000, NOOH for the mean estimate of cases of campylobacteriosis; the mean estimate of the domestically-acquired

fluoroquinolone-resistant *Campylobacter* cases in humans attributable to consumption of chicken; and the mean estimate of the number of people who were infected with fluoroquinolone-resistant *Campylobacter* from consuming or handling chicken and who subsequently received a fluoroquinolone as therapy for their illness. CVM is also adding the revised risk assessment to the References section of the NOOH.

Table 1 provides the location and actual revisions of items in the NOOH.

TABLE 1.—REVISIONS TO THE OCTOBER 31, 2000, NOOH

Location	Sentence as published	Correction
64955, 2d column, beginning on the 9th line from bottom of page	The risk assessment determined * * * a mean estimate of 11,477 persons (5th and 95th percentiles: 6,412 and 18,978) * * *''	''The risk assessment determined * * * a mean estimate of 9,261 persons, (5th and 95th percentiles: 5,227 and 15,326) * * *''
64962, 1st column, beginning on the 8th line	''Using the data on human *Campylobacter* * * * calculated a mean estimate of 1.7 million cases of campylobacteriosis (5th and 95th percentiles: 1.1 million and 2.7 million) for 1999 (Ref. 2).''	''Using the data on human*Campylobacter* * * * calculated a mean estimate of 1.4 million cases of campylobacteriosis (5th and 95th percentiles: 0.9 million and 2.1 million) for 1999 (Ref. 2a).''
64962, 1st column, 1st full paragraph, beginning on the 7th line from the bottom of the paragraph	''For 1999, the mean estimate of * * * is 190,421 (5th and 95th percentiles: 103,471 and 318,321) (Ref. 2).''	''For 1999, the mean estimate of * * * is 153,580 (5th and 95th percentiles: 83,990 and 258,047) (Ref. 2a).''
64962, 1st column, 2d full paragraph, beginning on the 7th line	''For 1999, the estimated * * * 11,477 (5th and 95th percentiles: 6,412 and 18,978) (Ref. 2).''	''For 1999, the estimated * * * a mean estimate of 9,261 persons, (5th and 95th percentiles: 5,227 and 15,326) (Ref. 2a).''
64962, 2d column, 1st full paragraph, beginning on the 13th line from the bottom of the paragraph	''The risk assessment determined in 1999 a mean estimate of 11, 477 people (5th and 95th percentiles: 6,412 and 18,978) * * *''	''The risk assessment determined in 1999 a mean estimate of 9,261 people (5th and 95th percentiles: 5,227 and 15,326) * * *''
64963, 2d column under IX. References, between Refs. 2 and 3		Insert the following reference between Refs. 2 and 3: ''2a. The Human Health Impact of Fluoroquinolone Resistant*Campylobacter* Attributed to the Consumption of Chicken, Revised: January 5, 2001.''

Dated: January 16, 2001.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 01–1866 Filed 1–18–01; 11:03 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1685]

New Food Chemicals Codex Monographs, Revisions of Certain Food Chemicals Codex Monographs, a New General Test Procedure, and Revisions to a Policy; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on proposed new Food Chemicals Codex specification monographs, proposed changes to certain Food Chemicals Codex specification monographs, a proposed new general test procedure, and proposed changes to a policy in the fourth edition. Additions, revisions, and corrections to current specification monographs for certain substances used as food ingredients and to a policy, as well as new monographs and a new general test procedure, are being prepared by The National Academies, Institute of Medicine (IOM), Committee on Food Chemicals Codex (the committee). This material is expected to be included in the next publication of the Food Chemicals Codex (the third supplement to the fourth edition), scheduled for public release in the summer of 2001.

DATES: Submit written comments by March 8, 2001. (The committee advises that comments received after this date may not be considered for the third supplement to the fourth edition. Comments received too late for consideration for the third supplement will be considered for later supplements or for a new edition of the Food Chemicals Codex.)

ADDRESSES: Submit written comments and supporting data and documentation to the Committee on Food Chemicals Codex/FO–3042, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418. Copies of the proposed new Food Chemicals Codex specification monographs, proposed changes to certain monographs, the proposed new general test procedure, and the proposed changes to a policy may be obtained upon written request from the IOM (address above) or may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests for copies should specify by name the monographs, general test procedure, or policy desired. For electronic access see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ricardo Molins, Project Director/FO–3042, Committee on Food Chemicals Codex, Food and Nutrition Board, Institute of Medicine, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or

Paul M. Kuznesof, Division of Product Manufacture and Use (HFS–246), Office of Premarket Approval, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: By contract with the IOM, FDA supports the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or other documentation to facilitate and expedite review by the committee.

In the **Federal Register** of August 8, 2000 (65 FR 48521), FDA announced that the committee was considering revised monographs, new and revised general test procedures, and revised test solutions for inclusion in the third supplement to the fourth edition of the Food Chemicals Codex. FDA is now announcing that the committee is soliciting comments and information on proposed new Food Chemicals Codex specification monographs, additional proposed changes to certain monographs, a proposed new general test procedure, and proposed changes to a policy. These new and revised monographs, new general test procedure, and revised policy are also expected to be published in the third supplement to the fourth edition of the Food Chemicals Codex. Copies of the proposed items may be obtained upon written request from IOM at the address listed above or through the Internet at http://www.iom.edu/fnb/fcc.

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new and revised monographs, new general test procedure, or revised policy into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of new monographs and changes that have received final approval of the committee, it will announce its intention and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions by all interested parties on specifications to be included in the 14 proposed new monographs, proposed revisions of 24 current monographs, proposed new general test procedure, and proposed revisions to a policy listed below:

I. Proposed New Monographs

Flavor Chemicals
Acetaldehyde Diethyl Acetal
2-Acetyl Thiazole
Allyl Phenoxy Acetate
Allyl Propionate
Borneol
Butyl 2-Methyl Butyrate
2-sec-Butyl Cyclohexanone
Diphenyl Ether
d-Fenchone
Fenchyl Alcohol
Furfuryl Alcohol
2-Furyl Methyl Ketone
Salatrim
Soy Protein Concentrate

II. Current Monographs to Which the Committee Proposes to Make Revisions

Ammonium Phosphate, Monobasic (fluoride test corrected)

Carmine (description and assay test revised)

Enzyme Preparations (classifications and reactions added for α-Acetolactatedecarboxylase;

Aminopeptidase, Leucine; and Lysozyme)

Flavor Chemicals

Cinnamic Acid (solubility in alcohol revised)

d-Dihydrocarvone (solubility in alcohol revised)

2-Heptanone (specific gravity revised)

Hexyl Isovalerate (solubility in alcohol revised)

Isoamyl Benzoate (solubility in alcohol revised)

Nerolidol (assay revised)

(Z)-6-Nonen-1-ol (refractive index revised)

alpha-Pinene (angular rotation revised)

2-Undecenol (specific gravity revised)

Potassium Phosphate, Monobasic (fluoride test corrected)

Potassium Phosphate, Tribasic (fluoride test corrected)

Potassium Pyrophosphate (fluoride test corrected)

Potassium Tripolyphosphate (fluoride test corrected)

Sodium Acid Pyrophosphate (fluoride test corrected)

Sodium Metaphosphate, Insoluble (fluoride test corrected)

Sodium Phosphate, Dibasic (fluoride test corrected)

Sodium Phosphate, Monobasic (fluoride test corrected)

Sodium Polyphosphate, Glassy (fluoride test corrected)

Sodium Potassium Tripolyphosphate (fluoride test corrected)

Sodium Trimetaphosphate (fluoride test corrected)

Sodium Tripolyphosphate (fluoride test corrected)

III. Proposed New General Test Procedure

Lipase (Microbial) Activity for Medium- and Long-Chain Fatty Acids (new enzyme assay)

IV. Proposed Revised Policy

Heavy Metals Limits Policy (reference to heavy metals as lead removed, additional revisions)

V. Comments and Electronic Access

Interested persons may, on or before March 8, 2001, submit to the Committee on Food Chemicals Codex written comments regarding the monographs, general test procedure, and proposed revision of the policy identified in this notice. Timely submission will ensure that comments are considered for the third supplement to the fourth edition of the Food Chemicals Codex. Comments received after this date may not be considered for the third supplement, but will be considered for subsequent supplements or for a new edition of the Food Chemicals Codex. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments regarding the monographs, general test procedure, or policy listed in this notice are to be submitted to the Committee on Food Chemicals Codex (address above). Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and each submission should include the statement that it is in response to this **Federal Register** notice. The committee staff will forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Copies may also be obtained through the Internet at http://www.iom.edu/fnb/fcc.

Dated: January 10, 2001.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 01–1713 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 5, 2001, from 8 a.m. to 6 p.m.

Location: Gaithersburg Marriott Washingtonian Center Salons F and G, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Megan Moynahan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, ext. 171, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on a premarket submission for a distal protection device used in the treatment of saphenous vein graft disease. Subsequently, the committee is being asked to provide input to the agency regarding the design of clinical trials for distal protection devices used in diseased saphenous vein grafts.

Procedure: On February 5, 2001, from 8 a.m. to 3 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 26, 2001. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m., and a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee near the end of the panel deliberations on February 5, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 26, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 5, 2001, from 3 p.m. to 6 p.m., the meeting will be closed to the public to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) regarding pending and future circulatory system device submissions. In addition, the committee will discuss and review trade secret and/or confidential commercial information presented by a sponsor.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 12, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–1712 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0001]

Regulatory Procedures Manual; Chapter 9: Import Operations/Action, Subchapter: Communication Concerning Assessment of Civil Monetary Penalties by U.S. Customs Service in Cases Involving Imported Food; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new subchapter of the Regulatory Procedures Manual. The new subchapter is entitled ''Communication Concerning Assessment of Civil Monetary Penalties by U.S. Customs Service in Cases Involving Imported Food.'' This subchapter has been provided to FDA's field offices to provide procedures for communication with the U.S. Customs Service (U.S. Customs) regarding assessment of civil monetary penalties involving imported foods. The subchapter is located in FDA's Regulatory Procedures Manual.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the subchapter entitled ''Communication Concerning Assessment of Civil Monetary Penalties by U.S. Customs Service in Cases Involving Imported Food'' to Joseph L. McCallion, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the subchapter.

Submit written comments on the subchapter to the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. McCallion, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION:

I. Background

On July 3, 1999, the President announced an initiative to ensure the safety of imported food by directing the Secretary of Health and Human Services (DHHS) and the Secretary of Treasury to develop new operational procedures to protect the public health. The initiative is geared to optimize the statutory authorities and resources available to FDA, DHHS and U.S. Customs, Department of Treasury to protect consumers from unsafe imported foods. The President directed the agencies to target unscrupulous importers who violate the import laws and work to subvert the system by introducing unsafe foods into U.S. markets. Six specific objectives were emphasized in the directive.

On December 11, 1999, the President announced the plan developed by FDA and U.S. Customs in response to the directive of July 3, 1999. One element of the plan was to enhance enforcement by having U.S. Customs assess civil monetary penalties in cooperation with FDA. The subchapter now being announced is setting out the procedures for accomplishing this objective.

The subchapter does not create or confer any rights, privileges, or benefits for, or on, any person and does not operate to bind FDA, U.S. Customs, or the public. The subchapter is being distributed in accordance with FDA's policy for Level 2 guidance documents as set out in the agency's good guidance practices regulation, published in the **Federal Register** of September 19, 2000 (65 FR 56468).

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this subchapter. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain copies of the subchapter at http://www.fda.gov/ora.

Dated: January 12, 2001.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 01–1699 Filed 1–17–01; 11:07 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0002]

Regulatory Procedures Manual; Chapter 9: Import Operations/Action, Subchapter: Secured Storage; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new subchapter of the Regulatory Procedures Manual. The new subchapter is entitled ''Secured Storage.'' This subchapter has been provided to FDA's field offices to provide operational procedures for identifying those importers who should be referred to the U.S. Customs Service (U.S. Customs) so that U.S. Customs can require those importers to place their imported foods into secured storage under the control of U.S. Customs pending a decision by FDA of their admissibility. The subchapter is located in Chapter 9 of FDA's Regulatory Procedures Manual.

DATES: Submit written comments at any time.

ADDRESSES: Submit written requests for single copies of the subchapter entitled ''Secured Storage'' to Joseph L. McCallion, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request.

Submit written comments on the subchapter to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the subchapter.

FOR FURTHER INFORMATION CONTACT: Joseph L. McCallion, Division of Import Operations and Policy (HFC–170), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

SUPPLEMENTARY INFORMATION:

I. Background

On July 3, 1999, the President announced an initiative to ensure the safety of imported food by directing the Secretary of the Department of Health and Human Services (DHHS) and the Secretary of the Treasury to develop new operational procedures to protect the public health. The initiative is geared to optimize the statutory authorities and resources available to the FDA, DHHS, and the U.S. Customs, Department of the Treasury, to protect consumers from unsafe imported foods. The President directed the agencies to target unscrupulous importers who violate the import laws and work to subvert the system by introducing unsafe foods into U.S. markets. Six specific objectives were emphasized in the directive.

On December 11, 1999, the President announced the plan developed by FDA and U.S. Customs in response to the directive of July 3, 1999. One element of the plan was to prevent distribution of imported unsafe food by requiring importers with a history of illegal distribution, misrepresentation, or substitution to hold future shipments in secure storage facilities until specifically released by FDA. The subchapter now being made available is setting out the procedures for accomplishing this objective.

The subchapter does not create or confer any rights, privileges, or benefits for, or on, any person and does not operate to bind FDA, U.S. Customs, or the public. The subchapter is being distributed in accordance the FDA's policy for Level 2 guidance documents as set out in the agency's good guidance practices, published in the **Federal Register** of September 19, 2000 (65 FR 56468).

II. Comments

Interested persons may, at any time, submit written comments to the Dockets Management Branch (address above) regarding this new subchapter. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the subchapter and any received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain a copy of this subchapter at http://www.fda.gov/ora.

Dated: January 12, 2001.

Dennis E. Baker,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 01–1700 Filed 1–17–01; 11:07 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0025]

Guidance for Industry on FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''FDA Recommendations for Sampling and Testing Yellow Corn and Dry-Milled Yellow Corn Shipments Intended for Human Food Use for Cry9C Protein Residues.'' Cry9C is a pesticidal protein that was introduced into the StarLink™ variety of yellow corn using recombinant deoxyribonucleic acid (DNA) techniques to make the corn more resistant to certain types of insects. StarLink™ corn is lawful only for use in animal feed, not human food. However, some Cry9C-containing corn was commingled with yellow corn intended for human use. This document outlines the approach that FDA recommends to manufacturers of corn products for human food use for sampling and testing yellow corn (and milled yellow corn in certain situations) in order to minimize the production of human food products with corn containing the Cry9C protein.

DATES: Submit written comments concerning this guidance to the Dockets Management Branch (address below) by March 23, 2001. After March 23, 2001, submit written comments to the contact person (address below).

ADDRESSES: Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the guidance to Lauren M. Posnick, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5321. Send one self-adhesive address label to assist that office in processing your request. Comments and requests for copies should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and comments received by March 23, 2001, are available for public

examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lauren M. Posnick, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5321, FAX 202–205–4422, e–mail: lposnick@cfsan.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is issuing guidance for industry on sampling and testing for the presence of Cry9C protein residues in yellow corn (and milled yellow corn in certain situations) intended for human food use. Cry9C is a pesticidal protein that was introduced into the StarLink™ variety of yellow corn to make the corn more resistant to certain types of insects. The Environmental Protection Agency (EPA) authorized StarLink™ corn only for use in animal feed, not human food. EPA has not authorized the use of StarLink™ corn in human food because there is an unresolved question about the allergenic potential of the Cry9C protein.

Although restricted to animal food use, some StarLink™ corn was commingled with yellow corn intended for human use. In addition, in certain limited cases, the Cry9C protein has also been detected in corn seeds of a non-StarLink™ variety of corn or in corn from such seeds. Aventis S.A., the developer of StarLink™, in cooperation with the U.S. Department of Agriculture, has been buying back harvested StarLink™ corn from the year 2000 crop to prevent its introduction into the human food supply. Because some Cry9C-containing corn may have been missed in the buy-back program and because some StarLink™ corn from the 1999 crop may still be in some grain elevators, FDA is urging corn dry-milling and masa operations to screen yellow corn (and milled yellow corn in certain situations) to minimize the production of human food products with corn containing the Cry9C protein. Because corn containing the Cry9C pesticide is adulterated if intended for human food use (21 U.S.C. 342(a)(2)(B)), manufacturers who detect Cry9C-containing corn in any lot should divert the lot to animal feed or industrial use.

The guidance document contains FDA's recommendations to dry milling and masa operations for sampling and testing yellow corn shipments; the guidance recommends appropriate tests, representative sampling procedures, appropriate analytical procedures, and appropriate personnel training. FDA believes these recommendations will help manufacturers to identify those lots of corn that contain the StarLink™ variety commingled with other yellow corn and avoid the use of such corn in human food products.

This Level 1 guidance is being issued consistent with FDA's good guidance practices regulation (65 FR 56468, September 19, 2000). The guidance represents the agency's current thinking on sampling and testing yellow corn for residues of the Cry9C protein. 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 and regulations. To the extent that use of this guidance helps millers and food manufacturers avoid the production of human food containing Cry9C residues, the guidance will help prevent human exposure to a potential food allergen and will otherwise help prevent adulteration of the food supply. Due to the urgent need to convey the sampling and testing recommendations to members of the food industry to help prevent the further introduction of Cry9C-containing corn into the human food supply, FDA conveyed the substance of this guidance to affected millers and food manufacturers in a letter dated December 27, 2000 (Ref. 1). Similarly, FDA is making this guidance document effective immediately because public participation prior to its implementation is not appropriate in these circumstances (21 CFR 10.115(g)(2); 65 FR 56478). However, in its letter of December 27, 2000, FDA recognized that some dry milling and masa operations may have inventories of stored grain or meal that have not been tested or have not been tested as described in the guidance document. Consistent with that advice, the agency is recommending that manufacturers that choose to follow this sampling guidance phase it in over a period of no more than 30 days dating from December 27, 2000.

Although the guidance document announced in this notice is being implemented immediately, FDA is requesting comments on the guidance. FDA will review all comments received, revise the guidance in response to the comments as appropriate, and publish a notice of availability of the revised guidance, if it is revised.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this immediately-in-effect guidance by March 23, 2001. After March 23, 2001, submit written comments regarding this guidance to the contact person (address above). FDA will consider such comments when determining whether to revise the current guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance document and comments received by March 23, 2001, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at www.cfsan.fda.gov.

III. References

The following references have been placed on display at the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday

1. Letter and recommendations, dated December 27, 2000.

2. ''Sampling and testing plan, scientific basis,'' January, 2000.

Dated: January 12, 2001.

Ann M. Witt,

Acting Associate Commissioner for Policy.

[FR Doc. 01–1609 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10027]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality,

utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: New collection; Title of Information Collection: Ambulance Attachment Form; Form Number: HCFA–10027 (OMB approval #: 0938–NEW); Use: This form is used by ambulance suppliers in Missouri to report information needed to process their claims; it is an attachment to the HCFA form 1491, which is used to submit ambulance claims; Frequency: On occasion; Affected Public: Business or other for-profit, Not-for-profit institutions, State, local, or tribal gov; Number of Respondents: Total Annual Responses: 5,000; Total Annual Hours Requested: 167 hours.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, HCFA–10027; Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 10, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–1724 Filed 1–19–01; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–304 and 304a]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Reconciliation of State Invoice and Prior Quarter Adjustment Statement (Medicaid Drug Rebate Program—Labelers); *Form No.:* HCFA–304 and 304a (OMB# 0938–0676); *Use:* Section 1927 of the Social Security Act requires drug labelers to enter into and have in effect a rebate agreement with HCFA for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 561; *Total Annual Responses:* 3,744; *Total Annual Hours:* 139,560. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 10, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–1723 Filed 1–19–01; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0232]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations at 42 CFR 421.300–421.318; *Form No.:* HCFA–R–0232 (OMB# 0938–0723); *Use:* HCFA needs this information to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. The entities providing the information are organizations that have been awarded, or seek award of, a Medicare Integrity Program contract; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 10; *Total*

Annual Responses: 10; *Total Annual Hours:* 2,400. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Wendy Taylor, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 10, 2001.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 01–1725 Filed 1–19–01; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2089–CN]

RIN 0938–AK33

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2001; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice; correction.

SUMMARY: This notice corrects the final allotments for Fiscal Year 2001 that appeared in the notice concerning the State Children's Health Insurance Program (SCHIP) published in the **Federal Register** on January 3, 2001.

EFFECTIVE DATE: This correction is effective January 3, 2001.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION: On January 3, 2001, we published a final notice in the **Federal Register** (66 FR 376) that set forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2001 under title XXI of the Social Security Act (the Act). There was an error in the computation of the FY 2001 allotments due to the fact that one of the formulas used in determining the allotments was incorrect. More specifically, the FY 1999 proportions were inadvertently applied twice in the calculation of the formula; the FY 1999 and FY 2000 proportions should have been applied instead. The term ''proportion'' is defined in section 2104(b)(4)(D)(I) of the Act and refers to a State's share of the total amount available for allotment for any given year. This document corrects the error made in the final notice.

Correction of Errors

In FR Doc. 01–69, published on January 3, 2001 (66 FR 376) make the following correction: On *page 379,* replace the text within the table entitled ''Table of State Children's Health Insurance Program Final Allotments for FY 2001''. The column descriptions and keys from the January 3, 2001 document are included to assist the reader.

Table of State Children's Health Insurance Program Final Allotments for FY 2001

Key to Table

Column/Description

Column A = Name of State, District of Columbia, U.S. Commonwealth or Territory.

Column B = Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children, and is based on the three most recent March supplements to the CPS of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2001 allotments were based on the 1997, 1998, and 1999 March supplements to the CPS. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be not covered by health insurance. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual March CPS on these topics.

For FY 2001, the Number of Children is equal to the sum of 50 percent of the number of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C = State Cost Factor. The State Cost Factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such final wage data for each State as reported, determined, and officially available to HCFA by the BLS in the Department of Labor for each of the most recent 3 years before the beginning of the calendar year in which the fiscal year begins. The FY 2001 allotments were based on final BLS wage data for 1995, 1996, and 1997.

Column D = Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States and the District of Columbia.

Column E = Proportion of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D. In FR Doc. 01–69, published on January 3, 2001, this column was incorrectly calculated and resulted in errors in columns F and G.

Column F = Adjusted Proportion of Total. This is the calculated percentage share for each State of the total allotment available after the application of the floors and ceilings and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the amended statute are: (1) A floor of $2 million divided by the total of the amount available; (2) an annual floor of 90 percent of (that is, 10 percent below) the preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (that is, 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (that is, 45 percent above) the FY 1999 allotment proportion.

Column G = Allotment. This is the SCHIP allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, this is determined as the Adjusted Proportion of Total in Column F for the State

multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territories and Commonwealths, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

CORRECTED SCHIP ALLOTMENTS FOR FEDERAL FISCAL YEAR 2001 [1]

A State	B Number of children (00)	C State cost factor	D Product	E Proportion of total [4]	F Adjusted proportion of total [4] (percent)	G Allotment [2]
Alabama	302	0.9659	291.71	1.52	1.65	$69,311,033
Alaska	41	1.0392	42.61	0.22	0.21	8,987,100
Arizona	542	1.0514	569.88	2.96	2.96	124,519,004
Arkansas	277	0.8931	246.94	1.28	1.28	53,957,231
California	2,905	1.1108	3,226.23	16.77	16.77	704,930,926
Colorado	204	1.0017	204.34	1.06	1.06	44,648,559
Connecticut	162	1.1165	180.31	0.94	0.94	39,398,021
Delaware	51	1.0889	54.99	0.29	0.25	10,505,758
District of Columbia	42	1.2960	53.78	0.28	0.28	11,751,544
Florida	978	1.0305	1,007.86	5.24	5.24	220,217,905
Georgia	621	0.9953	618.09	3.21	3.21	135,053,332
Hawaii	74	1.1690	85.92	0.45	0.28	11,669,166
Idaho	110	0.8893	97.83	0.51	0.49	20,715,109
Illinois	787	0.9966	783.85	4.07	3.80	159,838,759
Indiana	298	0.9234	274.71	1.43	1.43	60,023,791
Iowa	178	0.8469	150.76	0.78	0.78	32,940,215
Kansas	154	0.8719	134.27	0.70	0.70	29,337,719
Kentucky	276	0.9276	256.02	1.33	1.33	55,939,972
Louisiana	396	0.8876	351.06	1.82	1.95	82,017,657
Maine	68	0.9049	61.53	0.32	0.32	13,444,691
Maryland	225	1.0460	235.34	1.22	1.22	51,422,315
Massachusetts	292	1.0495	305.92	1.59	1.33	55,879,946
Michigan	573	1.0074	576.71	3.00	2.84	119,473,472
Minnesota	255	0.9824	250.02	1.30	0.88	37,042,610
Mississippi	289	0.8882	256.24	1.33	1.33	55,987,988
Missouri	326	0.9204	299.59	1.56	1.56	65,460,375
Montana	83	0.8415	69.42	0.36	0.36	15,169,315
Nebraska	102	0.8563	87.34	0.45	0.45	19,084,374
Nevada	120	1.1954	143.45	0.75	0.75	31,344,200
New Hampshire	58	0.9826	56.99	0.30	0.28	11,932,994
New Jersey	403	1.1237	452.28	2.35	2.35	98,823,044
New Mexico	219	0.9225	201.56	1.05	1.21	50,766,995
New York	1,360	1.0841	1,473.80	7.66	7.66	322,025,819
North Carolina	501	0.9899	495.95	2.58	2.47	103,718,942
North Dakota	48	0.8697	41.31	0.21	0.16	6,575,656
Ohio	675	0.9650	650.87	3.38	3.38	142,214,540
Oklahoma	262	0.8523	222.88	1.16	1.64	69,088,406
Oregon	228	1.0063	229.45	1.19	1.19	50,134,100
Pennsylvania	638	0.9969	636.01	3.31	3.31	138,968,854
Rhode Island	44	0.9785	42.57	0.22	0.22	9,300,803
South Carolina	294	1.0055	295.61	1.54	1.54	64,591,234
South Dakota	43	0.8703	37.42	0.19	0.19	8,177,039
Tennessee	446	0.9991	445.11	2.31	2.05	86,296,823
Texas	2,028	0.9277	1,880.82	9.77	10.76	452,531,213
Utah	153	0.9059	138.14	0.72	0.72	30,184,401
Vermont	29	0.8696	25.22	0.13	0.11	4,611,995
Virginia	350	0.9885	345.50	1.80	1.80	75,491,290
Washington	314	0.9467	296.78	1.54	1.45	60,869,643
West Virginia	108	0.8961	96.77	0.50	0.50	21,144,989
Wisconsin	241	0.9438	226.99	1.18	1.18	49,597,970
Wyoming	38	0.8779	32.92	0.17	0.17	7,193,664
Total states only	.....	.....	19,241.72	100.00	100.00	4,204,312,500
Allotments for commonwealths and territories [3]						
Puerto Rico	.....	.....	.....	91.60	.....	41,116,950
Guam	.....	.....	.....	3.50	.....	1,571,063
Virgin Islands	.....	.....	.....	2.60	.....	1,167,075

CORRECTED SCHIP ALLOTMENTS FOR FEDERAL FISCAL YEAR 2001 [1]—Continued

A State	B Number of children (00)	C State cost factor	D Product	E Proportion of total [4]	F Adjusted proportion of total [4] (percent)	G Allotment [2]
American Samoa	.....	.....	.....	1.20	.....	538,650
N. Mariana Islands	.....	.....	.....	1.10	.....	493,763
Total commonwealths and territories only				100.00	.....	44,887,500
Total states and commonwealths and territories						4,249,200,000

(1) Corrects chart that was originally published in the **Federal Register** on January 3, 2001 on pages 379-380.
(2) Total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500; determined as the fiscal year appropriation ($4,275,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act ($10,687,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of the Balanced Budget Act of 1997 (BBA 1997) (Public Law 105–33).
(3) Total amount available for allotment to the Commonwealths and Territories is $10,687,500 (determined as .25 percent of $4,275,000,000, the fiscal year appropriation) plus $34,200,000 as specified in section 2104(c)(4)(B) of the Act.
(4) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Act.

(Authority: Section 1102 of the Social Security Act, 42 U.S.C. 1302)
(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: January 12, 2001.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 01–1690 Filed 1–19–01; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project: Uniform Data System (OMB No. 0915–0193)—Revision

This is to request a revision of approval of the Uniform Data System (UDS), which contains the annual reporting requirements for the cluster of primary care grantees funded by the Bureau of Primary Health Care (BPHC), Health Resources and Services Administration (HRSA). The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Outreach and Primary Health Services for Homeless Children and Public Housing Primary Care. Authorizing Legislation is found in Public Law 104–299, Health Center Consolidation Act of 1996, enacting Section 330 of the Public Health Service Act.

The Bureau of Primary Health Care collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, BPHC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The UDS includes two components: the Universal Report, completed by all grantees, provides data on services, staffing, and financing; and the Grant Report, completed by grantees funded under the Homeless or Public Housing Program as well as one of the other programs, provides data on characteristics of users whose services fall within the scope of the Homeless or Public Housing Program grant. Grantees are also asked to provide information on the charges, collections, bad debt write off and contractual disallowances by payor sources (Medicaid, Medicare, self pay and private insurance). In addition, grantees need to include categories to some of the lists (*e.g.,* services, ICD codes, CPT codes) and annotating the forms to indicate which lines are subtotals and the lines to which they sum.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Hours per response	Total burden hours
Universal Report	712	24	17,088
Grant Report	96	16	1,536
Total	712	.....	18,624

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 12, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–1611 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project: Grantee Data Reporting System for the Rural Health Outreach Grant Program (RHOGP): New

The Rural Health Outreach Grant Program (RHOGP) is one of the major grant programs managed and funded by the Office of Rural Health Policy, Health Resources and Services Administration. The overall objectives of the program are to expand access to, coordinate, restrain the cost of, and improve the quality of essential health care services, including preventive and emergency services, through the development of integrated health care delivery systems or networks in rural areas and regions. While each project has different objectives and activities, all grantee projects involve the use of Networks of three or more organizations working together to improve health care in their communities. Projects may be carried out by networks of the same providers (*e.g.,* all hospitals) or more diversified networks.

The proposed data collection instruments are intended to strengthen the Office of Rural Health Policy's (ORHP) Outreach Grant Program's existing grantee evaluation process and grantee data collection. This information collection activity will provide ORHP with an increased capacity for monitoring and evaluation and will permit the efficient review of the grant projects in relation to HRSA's strategic objectives.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Grantee Reporting Form	53	1	8	424
Year 1 Progress Report	140	1	8	1120
Year 2 Progress Report	140	1	8	1120
Final Report	53	1	12	636
Total	193	.....	.....	3300

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 11, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–1613 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Scholarship Program for Students of Exceptional Financial Need (EFN) and Program of Financial Assistance for Disadvantaged Health Professions Students (FADHPS): Regulatory Requirements (OMB No. 0915–0028)—Reinstatement, With Change

The EFN Scholarship Program, authorized by section 736 of the Public Health Service (PHS) Act, and the FADHPS Program, authorized by section 740(a)(2)(F) of the PHS Act, provides financial assistance to schools of allopathic and osteopathic medicine and dentistry for awarding tuition scholarships to health professions students who are of exceptional financial need. To be eligible for support under the FADHPS Program, a student must also be from a

disadvantaged background. In return for this support, students of allopathic and osteopathic medicine must agree to complete residency training in primary care in 4 years, and practice in primary care for 5 years after completing residency training.

The program regulations contain recordkeeping requirements designed to ensure that schools maintain adequate records for the government to monitor program activity and that funds are spent as intended. The estimate of burden for the regulatory requirements of this clearance are as follows:

Form	Number of respondents	Responses per respondents	Total responses	Minutes per response	Total burden hours
EFN/FADHPS	80	1	80	10	14

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 12, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–1612 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 2001.

Name: National Advisory Council on the National Health Service Corps.

Date and Time: February 1, 2001; 6:00 p.m.–9:00 p.m.; February 2, 2001; 8:30 a.m.–4:30 p.m.; February 3, 2001; 9:00 a.m. to 5:00 p.m.; February 4, 2001; 8:30 a.m.–10:30 a.m.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852. Phone: (301) 468–1100.

The meeting is open to the public.

Agenda: The Council will focus its agenda on strategic and operational plans for the current fiscal year.

For further information, call Ms. Eve Morrow, Division of National Health Service Corps, at (301) 594–4144.

Agenda items and times are subject to change as priorities dictate.

Dated: January 12, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–1610 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 2001.

The National Advisory Committee on Rural Health will convene its thirty-seventh meeting at the time and place specified below:

Name: National Advisory Committee on Rural Health.

Date and Time: February 4, 2001; 2:00 p.m.–4:45 p.m.; February 5, 2001; 8:30 a.m.–4:45 p.m.; and February 6, 2001; 8:30 a.m.–4:15 a.m.

Place: Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001, Phone: (202) 628–2100.

The meeting is open to the public.

Purpose: The National Advisory Committee on Rural Health provides advice and recommendations to the Secretary with respect to the delivery, research, development, and administration of health care services in rural areas.

Agenda: Sunday, February 4, at 2:00 p.m. the chairperson, Senator Nancy Kassebaum Baker will open the meeting and welcome the committee members. The new director of the Office of Rural Health Policy (ORHP) will give an update on office activities. The first plenary session will be a presentation on the Medicare Reform Report. The day will close at 4:45 PM.

Monday morning at 8:30 a.m., there will be presentations on federally qualified health centers and rural health clinics. After lunch, there will be a presentation on what the States are doing about the uninsured. The day will close at 4:45 PM.

Tuesday morning at 8:30 am, the Committee will discuss report recommendations. There will be a presentation on rural public health, and an update on Health Care Financing Administration (HCFA) activities. After lunch, additional presentations and discussion on the uninsured. At the end of the day the Committee will discuss future activities and next meeting. The meeting will be adjourned at 4:15 PM.

Anyone requiring information regarding the Committee should contact Marcia K. Brand, Ph.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Sandi Lyles or Lilly Smetana, Office of Rural Health Policy, (301) 443–0835. The National Advisory Committee meeting agenda will be posted on ORHP's website, www.ruralhealth.hrsa.gov.

Dated: January 16, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–1714 Filed 1–19–01; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General; Program Exclusions: December 2000

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.,* a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive

Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-Related Convictions	
Ashkaryan, Gevork ..... North Hollywood, CA	01/18/2001
Barksdale, Evelyn R ..... Gillispie, IL	01/18/2001
Blum, Eduardo ..... Miami, FL	01/18/2001
Brock, Danny Leslee ..... Cottageville, SC	01/18/2001
Carbone, Francisco ..... Weston, CT	01/18/2001
Carsillo, Richard ..... Asheville, NC	01/18/2001
Downtown Dental Center, PA .. Paterson, NJ	01/18/2001
Foreman, Lenetta Grant ..... Tahlequah, OK	01/18/2001
Gallardo, Omar ..... Matamoras, PA	01/18/2001
Goodman, Harold F ..... Quincy, MA	01/18/2001
Gordon, Howard ..... Boca Raton, FL	01/18/2001
Hamlin, Donald R ..... Burnside, KY	01/18/2001
Isola, Joseph C ..... Norwell, MA	01/18/2001
Jackson, Robert Jerry ..... Mt. Juliet, TN	01/18/2001
Khandwala, Nitin ..... Livingston, NJ	01/18/2001
Kinloch-Linder, Henri Renee .... Walterboro, SC	01/18/2001
Lathan, Janice ..... Macon, MS	01/18/2001
Limon, Josephine Apodaca ..... Glendale, AZ	01/18/2001
Mack, Demetrius L ..... Milwaukee, WI	01/18/2001
Madruga, Jorge ..... Corona, NY	01/18/2001
Neufeld, Elliot Lance ..... Columbus, OH	01/18/2001
Nguyen, Doi Thanh ..... San Diego, CA	01/18/2001
O'Donnell, Carol ..... Syracuse, NY	01/18/2001
Orthopedic Surgery of S. Shore Quincy, MA	01/18/2001
Pierce, Ben ..... Houston, TX	01/18/2001
Ramos-Santiago, Nelson DeJesus ..... Pensacola, FL	01/18/2001
Rodriguez, Pedro J ..... Charlotte, NC	01/18/2001
Sailors, Betty Smith ..... Lexington, KY	01/18/2001
Streetman, Donald Ernest ..... Statesboro, GA	01/18/2001
Way, Latoshia E ..... Cottageville, SC	01/18/2001
Welber, Agneta ..... Brooklyn, NY	01/18/2001
Zwiebel, Kenneth ..... Laurel Hollow, NY	01/18/2001
Felony Controlled Substance Conviction	
Draper, Byrant ..... Maxwell AFB, AL	01/18/2001
Hogg, Amber Donee ..... Heber Springs, AR	01/18/2001
Jenkins, Kimberly Kay ..... Huntington BCH, CA	01/18/2001
Kennedy, John Henry ..... Chattanooga, TN	01/18/2001
Story, Diana L ..... Lenoir, NC	01/18/2001
Thomasson, Dustin Wade ..... Enid, OK	01/18/2001
Walker, Pamela Demetria ..... Marianna, FL	01/18/2001
Patient Abuse/Neglect Convictions	
Anderson, Robert Jr ..... Hattiesburg, MS	01/18/2001
Bridges, Daniel ..... Picayune, MS	01/18/2001
Brown, Derek Milton ..... San Antonio, TX	01/18/2001
Brown, Carl E ..... Rutland, VT	01/18/2001
Burrus, Shantina Marie ..... Hopkinsville, KY	01/18/2001
Carroll, Christopher A ..... Wesson, MS	01/18/2001
Gurwell, Kenneth Warren ..... Susanville, CA	01/18/2001
Harvey, Raysha Kenee ..... Long Beach, MS	01/18/2001
Hutton, Shirley Ann ..... Columbia, MS	01/18/2001
Lambriola, Vincent P ..... Cedar Grove, NJ	01/18/2001
Lera, Thomas Alfred Jr ..... Galveston, TX	01/18/2001
McGregor, Clinton E ..... Baltimore, MD	01/18/2001
Mize, Erick Wayne ..... Stringtown, OK	01/18/2001
Moore, Kimberly E ..... Trenton, TN	01/18/2001
Moret, Israel ..... Bridgewater, MA	01/18/2001
Morris, Christel Rozell ..... Tacoma, WA	01/18/2001
Potter, Rose M ..... Columbus, OH	01/18/2001
Sledge, Katrina E ..... Macon, MS	01/18/2001
Tanner, Karen S ..... Columbus, OH	01/18/2001
Wallace, Arthur Cleveland ..... Elmira, NY	01/18/2001
Williams, Roger L ..... Belleville, IL	01/18/2001
Wrinkles, Jeffrey ..... W. Plains, MO	01/18/2001
Controlled Substance Convictions	
Chaiet, Melvin ..... Beltsville, MD	01/18/2001
Muhar, Ivy Mae ..... St. Petersburg, FL	01/18/2001
License Revocation/Suspension/ Surrendered	
Abney, Dennis ..... Burlingame, CA	01/18/2001
Allen, Joy Holley ..... Mabelvale, AR	01/18/2001
Ashmore, Patricia Todd ..... Clifton Hgts, PA	01/18/2001
Atkinson, Deborah Jean ..... Lewisville, TX	01/18/2001
Ball, Louis Albert ..... S. Lake Tahoe, CA	01/18/2001
Barber, Bradley James ..... Potsdam, NY	01/18/2001
Barnes, Deborah D ..... Newport News, VA	01/18/2001
Baumgartner, Debra L ..... Thompson, CT	01/18/2001
Bellin, Eugene LLoyd ..... Bronx, NY	01/18/2001
Berkness, Carrie Lee ..... St. Francis, MN	01/18/2001
Bernhard, Kathleen Mary ..... Port Jervis, NY	01/18/2001
Berry, Cathy Diane Gamble ..... Hanceville, AL	01/18/2001
Bickerstaff, Delton Lee Jr ..... Selma, AL	01/18/2001
Biljan, Sheila Marie ..... Inver Grove Hgts, MN	01/18/2001
Braid, Byron Saul ..... Chadds Ford, PA	01/18/2001
Brooker, Debra Marie ..... Framingham, MA	01/18/2001
Brubaker, Susan Lynne ..... San Anselmo, CA	01/18/2001
Bustamante, Eduardo Munoz ... Amherst, MA	01/18/2001
Byram, James Ray ..... Florence, AL	01/18/2001
Camarata, Anthony ..... Rochester, NY	01/18/2001
Campagnone, Paul J ..... Colchester, VT	01/18/2001
Campos-Deltoro, Carolyn Anne Salem, AR	01/18/2001
Cannon, Kathy M ..... Northridge, CA	01/18/2001
Carron, William Clark ..... Seattle, WA	01/18/2001
Carter-Oberstone, Becky Durley ..... Fallbrook, CA	01/18/2001
Chadd, Stephen Mark ..... Corpus Christi, TX	01/18/2001
Chance, Charlene Kim ..... Elgin, MN	01/18/2001
Chin, Ed Ming ..... New York, NY	01/18/2001
Chirhart, Cynthia Ann ..... Temple, TX	01/18/2001
Chizmar, Elizabeth A ..... Springfield, VT	01/18/2001
Ciani, John Thomas ..... Schenectady, NY	01/18/2001
Claren, Paul R ..... Orwell Township, OH	01/18/2001
Clausen, Winifred Elra ..... Santa Rosa, CA	01/18/2001
D'Ascoli, Bartholomew R ..... Montague, NJ	01/18/2001
Davidson, Kenneth Ronald ..... Reseda, CA	01/18/2001
Davis, Marlo M ..... Pittsburgh, PA	01/18/2001
Dhaliwal, Rimplejit Singh ..... Bakersfield, CA	01/18/2001
Dodd, Elizabeth P	01/18/2001

Subject city, state	Effective date
Kalamazoo, MI	
Dougherty, Bruce Elliott ..... Middletown, CT	01/18/2001
Dyer, Marcella C ..... Springfield, VA	01/18/2001
English, Robert Livingston III ... Santa Rosa, CA	01/18/2001
Farquhar, Nancy Ann ..... Hoover, AL	01/18/2001
Faybik, Michelle Leigh H ..... New Kensington, PA	01/18/2001
Ford, Bonnie Lee ..... Bovey, MN	01/18/2001
Foster, Lynn Kay ..... Martinez, CA	01/18/2001
Freeland, Frances J ..... Meriden, CT	01/18/2001
Freeman, Janet Sue ..... Edgewater, FL	01/18/2001
Gamber, Elizabeth A ..... Lake Havasu City, AZ	01/18/2001
Gordon, Teri L ..... Wyandotte, MI	01/18/2001
Grant, Richard Leslie ..... Wasilla, AK	01/18/2001
Gunkel, George Frederick ..... San Francisco, CA	01/18/2001
Hancock, Julie Delynn ..... Stephenville, TX	01/18/2001
Harper, Patricia E ..... Newark, TX	01/18/2001
Hickman, Clara Charlene ..... Piedmont, AL	01/18/2001
Hill, Patricia S ..... West Monroe, NY	01/18/2001
Hoagland, William Russell ..... Boling Green, FL	01/18/2001
Hudson, Leigh Ann ..... New Castle, DE	01/18/2001
Irvine, Gerald Lenard ..... Montgomery, AL	01/18/2001
Jones, Mary Dee ..... Greensburg, LA	01/18/2001
Kelley, Ira John ..... Conneautville, PA	01/18/2001
Kooker, Robert Allen ..... Loomis, CA	01/18/2001
Lake, Alan Shanley ..... Anaheim, CA	01/18/2001
Lambe, Michael J ..... New Britain, CT	01/18/2001
Lambert, Sheryl Yanick ..... Chicago, IL	01/18/2001
Lansford, Cynthia Leah ..... Birmingham, AL	01/18/2001
Large, James Matthew ..... Finleyville, PA	01/18/2001
Licerio, Lulex Guerrero ..... Orangeburg, NY	01/18/2001
Lopp, Roddie M ..... Louisburg, NC	01/18/2001
Lucker, Edward ..... Pleasant Valley, NY	01/18/2001
Lynch, Francis R ..... N. Haven, CT	01/18/2001
Marsh, John R ..... San Andreas, CA	01/18/2001
Martinez, Maria Anita ..... Fresno, CA	01/18/2001
Mather, William H ..... Douglasville, GA	01/18/2001
Matthews, Pamela ..... Chicago, IL	01/18/2001
McAllister, Charles H ..... Hialeah, FL	01/18/2001
McClellan-Dunson, Ionia ..... Freeport, IL	01/18/2001
McCulloch, Rhonda Kay ..... Hokes Bluff, AL	01/18/2001
McCurry, Tamiko ..... Chicago, IL	01/18/2001
McDonald, Keith William ..... Secaucus, NJ	01/18/2001
McElroy, Sheronne Renee ..... Chicago, IL	01/18/2001
Meads, Linda ..... Los Altos, CA	01/18/2001
Medina, Benjamin ..... Chicago, IL	01/18/2001
Melchor, Eduardo L ..... Barrington, IL	01/18/2001
Melton, Walter ..... Sprott, AL	01/18/2001
Mendelsohn, Deborah Miriam .. Waverly, PA	01/18/2001
Mendo-Cruz, Patricia ..... Whittier, CA	01/18/2001
Michalowski, Andrew Peter ..... Berwyn, IL	01/18/2001
Midzenski, Malinda A ..... Baltimore, MD	01/18/2001
Millburn, Joanne M ..... Philadelphia, PA	01/18/2001
Miller, Nival Rizk ..... Tuscaloosa, AL	01/18/2001
Mitchell, Brian ..... Chicago, IL	01/18/2001
Montese, Romeo ..... Coral Springs, FL	01/18/2001
Moody, Beth Ann ..... Conroe, TX	01/18/2001
Moore, Samantha Claire ..... Rainbow City, AL	01/18/2001
Moy, Jenny ..... Chicago, IL	01/18/2001
Mullins, Phyllis ..... Gulfport, MS	01/18/2001
Murphy, Gregory Allen ..... Bolingbrook, IL	01/18/2001
Murphy, Madison Dee ..... Idaho Falls, ID	01/18/2001
Nelson, Mae Ellen ..... Lubbock, TX	01/18/2001
Nelson, Janice Louise ..... Chicago, IL	01/18/2001
Newkirk, Garry Lee ..... Pacifica, CA	01/18/2001
Nicolai, Anne ..... Davison, MI	01/18/2001
Nkatu, Nsiele M ..... Los Angeles, CA	01/18/2001
Norris, Stephanie Ann ..... Cambridge, IL	01/18/2001
O'Brien, Patricia A ..... Washington, PA	01/18/2001
O'Connor, Michael W ..... Chicago, IL	01/18/2001
O'Dell, Bruce La Von ..... Mesa, AZ	01/18/2001
O'Shea, Frank M ..... Ellicott City, MD	01/18/2001
Palmer, Donna Kay Mitchell ..... Picayune, MS	01/18/2001
Pascucci, Nicholas James ..... Woodhaven, NY	01/18/2001
Peirce, Mary Elizabeth Chandle Daphne, AL	01/18/2001
Perkerson, Ralph Benton Jr ..... Jacksonville, FL	01/18/2001
Petersen, David K ..... Boise, ID	01/18/2001
Preston, Anne Shannon ..... Vestavia, AL	01/18/2001
Preston, Colleen Marie ..... Elk River, MN	01/18/2001
Ransom, Robert Stephens ..... Irvine, CA	01/18/2001
Ream, Monica Irwin ..... Elfred, PA	01/18/2001
Roberson, Traci S ..... Detroit, MI	01/18/2001
Roberts, Rammie ..... Oklahoma City, OK	01/18/2001
Roberts, John ..... Los Angeles, CA	01/18/2001
Ruffolo, Pasquale R ..... Hamden, CT	01/18/2001
Salter, Clifford James ..... St. Petersburg, FL	01/18/2001
Santa-Teresa, Bienvendio ..... Irvine, KY	01/18/2001
Savedra, Phyllis ..... Long Beach, CA	01/18/2001
Self, Jo Anna ..... Bessemer, AL	01/18/2001
Sen, Devashish ..... Newton, MA	01/18/2001
Shelton, Margaret Ann ..... Capitola, CA	01/18/2001
Smith, Randolph Lee ..... Pomona, CA	01/18/2001
Street, Brenda Hardin ..... Hot Springs, AR	01/18/2001
Swanson, Andrew Norman ..... Napa, CA	01/18/2001 01/18/2001
Wagner, Marie W ..... Dallas, TX	01/18/2001
White, Clinton Ray ..... Clute, TX	01/18/2001
Winmill, Diana Renee ..... Blackfoot, ID	01/18/2001
Yarbrough, Ardry Lance ..... Atoka, OK	01/18/2001
Young, Patricia Anketell ..... Sherman Oaks, CA	01/18/2001
Federal State Exclusion/Suspension	
Angulo, Ismael ..... Chicago, IL	01/18/2001
Bungcayao, Isabelo Calacal ..... Oak Brook, IL	01/18/2001
Jairath, Ravindra Kumar ..... Chicago, IL	01/18/2001
Kilani, Reda ..... Naperville, IL	01/18/2001
Quach, Minh ..... Chicago, IL	01/18/2001
Tabe, Henry Brendan Ebot ..... Oak Park, IL	01/18/2001
Trung Tin Gift & Pharmacy ..... Chicago, IL	01/18/2001
Fraud/Kickbacks	
Eaglin, Gerardette ..... Marietta, GA	10/17/2000
Entities Owned/Controlled by Convicted	
Agma, Drug, Inc	01/18/2001

Subject city, state	Effective date
East Meadow, NY	
Appalachian Medical Supply .... Asheville, NC	01/18/2001
Burnside Pharmacy ..... Burnside, KY	01/18/2001
Genesee Hearing Svcs, LLP .... Buffalo, NY	01/18/2001
Home Infusion Mgmt. Svc ..... Congers, NY	01/18/2001
Medical Repair Center, Inc ..... La Mesa, CA	01/18/2001
Willowbrook Medical Treatment Wayne, NJ	01/18/2001
Default on Heal Loan	
Ardalan, Mehrmaz ..... West Hills, CA	01/18/2001
Booher-Fulton, Janette L ..... S. San Francisco, CA	01/18/2001
Bunce, Christine T ..... Oakland, CA	01/18/2001
Caldwell, Larry Von ..... Gretna, LA	01/18/2001
Dominics, Beth Anne ..... Los Angeles, CA	01/18/2001
Dowell, Alfonzo N Jr ..... Oklahoma City, OK	01/18/2001
Farrell, Robert J ..... San Diego, CA	12/13/2000
Funcia, Ana T ..... Miami, FL	01/18/2001
Gieschen, John M ..... Santa Cruz, CA	01/18/2001
Gillies, Douglas K ..... Roswell, NM	01/18/2001
Grant, Terry E ..... Freeport, NY	01/18/2001
Imani, Ibn A ..... Tallahassee, Fl	11/21/2000
Jakubczak, Arthur F ..... Perth Amboy, NJ	01/18/2001
Jefferson, Michael Kenneth ..... Woodland Hills, CA	01/18/2001
Jimerson, Ruthie M ..... Youngstown, OH	11/27/2000
Jubert, Angela K ..... Anderson, IN	11/27/2000
McGinn, Thomas D ..... Milford, UT	01/18/2001
Mendes, Antonio C ..... Canton, MA	01/18/2001
Negron, Candido ..... Philadelphia, PA	01/18/2001
Omohundro, William A ..... S. Pittsburg, Tn	01/18/2001
Pinnace, Jeanette L ..... Ridley Park, PA	11/28/2000
Polee, George ..... Nashville, TN	11/28/2000
Rey, Jorge E ..... Chino, CA	01/18/2001
Rocha, Mark W ..... Riverside, CA	11/29/2000
Smith-Chapin, June D ..... Auburn Hills, MI	01/18/2001
Soto, Mario J ..... Fresno, CA	01/18/2001
Summers, Shawn J ..... Los Angeles, CA	01/18/2001
Taylor, Berlan L ..... Alicia, AR	01/18/2001
Yagow, John T	01/18/2001
Watertown, WI	

Dated: January 8, 2001.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 01–1622 Filed 1–19–01; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESS: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Ribonuclease H1—A Protein Expressed in Escherichia coli From a Cloned Human RNase H1 cDNA

Robert J. Crouch, Susana Cerritelli, Sergey Gaidamakov, and Hirofumi Yamada (NICHD)

DHHS Reference No. E–047–01/0

Licensing Contact: Sally Hu; 301/496–7056 ext. 265; e-mail: hus@od.nih.gov.

Available for licensing through a Materials License Agreement (no patent or patent application) are samples of purified human RNase H1 protein, expressed in E. coli from human RNase H1 cDNA. This protein is important for cellular functions such as DNA synthesis and repair. This protein also is related by sequence, structure and enzymatic mechanism to the RNase H of retroviruses such as HIV. Since the cellular and viral proteins have similar properties, it would be useful to screen for potential drugs that have little or only modest effects on the cellular protein while inhibiting the HIV enzyme. Thus, the availability of both the retroviral and human RNases H1 makes drug screening and anti-sense therapy possible to perform.

Methods for the Identification of Textual and Physical Structured Query Fragments for the Analysis of Textual and Biopolymer Information

Robert J. Boissy (NIEHS)

DHHS Reference No. E–270–99/0 filed 15 Nov 2000

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: berkleyd@od.nih.gov.

The invention comprises algorithms implemented in software for ''structured combinatorial queries'' that may be used for analyses of relatedness and information content in any textual information, and especially in biological sequences. The invention also includes experimental methods for isolating and comparing DNA fragments (''Structured Query Fragments'' or SQFs) obtained using site-specific cleavage effectors acting on substrate DNA that is asymmetrically end-immobilized on a solid support. A small, structured array of such cleavage effectors may be used in a combinatorial fashion to generate progressively expanding sets of asymmetrically end-immobilized, double-stranded DNA. This ultimately yields extremely large numbers of SQFs, which typically have lengths in the range of 100–700 nucleotides (and are termed ranged SQFs). Thus, each SQF is defined by a method (a specific combinatorial pathway required to isolate it) and one or more properties (typically its length). These attributes yield sufficient information to identify and assign ranged SQFs to specific locations in known sequences automatically using the software disclosed in the invention. The invention shows how millions of individual ranged SQFs distributed throughout the human genome may be unambiguously identified at nucleotide resolution using a fragment analysis instrument. Accordingly, the invention provides a computational method that is flexible and efficient at comparing large amounts of textual information (typically biological sequence data), and a unique laboratory strategy that emulates the computational method and provides a highly scalable approach for physical analyses of polynucleotides. This laboratory strategy allows for the analysis and isolation of large numbers

of specific SQFs of interest, without the use of cloning techniques or polynucleotide amplification protocols that require locus-specific primers.

Probe Using Diffuse-Reflectance Spectroscopy

Amir H. Gandjbakhche (NICHD), David W. Hattery (NICHD), James L. Mulshine (NCI), Paul D. Smith (ORS), Ernie Hawk (NCI), Victor Chernomordik (NICHD)

DHHS Reference No. E–309–00/0 filed 06 Oct 2000

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: berkleyd@od.nih.gov.

The invention uses an oblique angle reflectance spectroscopy method to non-invasively quantify the thickness of the oral epithelium as a means for quantifying inflammation at sites in the oral cavity. In this technique, a toothbrush-sized probe is used to direct photon sources at two or more oblique angles and measure the scattered spectra to determine the thickness of the epithelial layer. Analysis of the spectra provides the location of the stroma/epithelium interface. The invention has applications in the assessment of drugs used in the treatment of Leukoplakia, which is characterized by a thickening of the oral epithelium as the underlying stroma remains unchanged. The invention provides a non-invasive technique for determining the efficacy of drugs used to treat the lesion, and promises to replace the need for uncomfortable punch biopsies.

Modified HCV Peptide Vaccine

Jay A. Berzofsky (NCI), Pablo Sarobe (NCI), CD Pendleton (NCI), Stephen M. Feinstone (FDA)

DHHS Reference Nos. E–192–98/0 filed 21 Aug 1998 and E–192–98/1 filed 17 Aug 1999

Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov.

Hepatitis C virus (HCV) is a single stranded RNA virus responsible for the majority of non-A non-B hepatitis. Hepatitis C virus (HCV) has a worldwide distribution and is a major cause of liver cirrhosis and hepatocellular carcinoma in the U.S., Europe, and Japan. For this reason, development of a vaccine against hepatitis C is of great importance.

The present invention provides immunogenic peptides of HCV core protein which elicit an enhanced immune response, methods for making these peptides, and methods for using these peptides for a variety of therapeutic, diagnostic, and prognostic applications, including a vaccine. More specifically, the present invention provides an isolated peptide, an isolated HCV core polypeptide, a fragment of an HCV core polypeptide and nucleic acids which encode the peptides and polypeptides of this invention. The invention provides a modified HCV core peptide that is more immunogenic than the corresponding natural core peptide for eliciting human cytotoxic T lymphocytes.

Dated: January 8, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–1643 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Novel Technologies for Noninvasive Detection, Diagnosis, and Treatment of Cancer.

Date: February 23, 2001.

Time: 8 am to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, 6130 Executive Boulevard, Conference Room J, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8066, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1628 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Cancer Complementary and Alternative Medicine Initiative in Cancer Centers.

Date: February 19–21, 2001.

Time: 7:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1629 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: February 20–22, 2001.

Time: 9:00 AM to 12:00PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Harvey P. Stein, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8137, Bethesda, MD 20892, (301) 496–7841.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1630 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center Institute Special Emphasis Panel, Spore Review Genitourinary and Prostate Cancer.

Date: February 15–16, 2001.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Brian E. Wojcik, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institute of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1631 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Determining the Carcinogenic Significance of Heterocyclic Amines.

Date: February 9, 2001.

Time: 11:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Grants Review Branch, Division of Extramural Activities, 6116 Executive Boulevard, Room 8127, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael B. Small, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1632 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: January 29, 2001.

Time: 12:30 pm to 2:30 pm.

Agenda: To get updates from the working groups and to discuss the advocates section of the April 2001 DCLG meeting.

Place: National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Elaine Lee, Acting Executive Secretary, Office of Liaison Activities, National Institute of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 300 C, Bethesda, MD 20892, 301/594–3194.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1633 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Human Factors in Breast Cancer Detection and Diagnosis.

Date: February 8–10, 2001.

Time: 7:30 PM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: Wyndham Garden Brookfield, 18155 W. Bluemound Rd., Brookfield, WI 53045.

Contact Person: William D. Merritt, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

This notice is being published less than 15 days prior to the meeting the due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1634 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Orientation and Review: Demonstration & Education Research Grants.

Date: February 22, 2001.

Time: 1:15 PM to 4:45 PM.

Agenda: To review and evaluate grant applications.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Louise P. Corman, Scientific Review Administrator, Review Branch, Room 7180, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1635 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Adhesion Molecules in Transfusion Biology.

Date: January 30, 2001.

Time: 11 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Columbia Sheraton, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Jeffrey H. Hurst, Health Scientist Administrator, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301–435–0303.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1636 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institutes; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Biobehavioral Bases of CHD Risk and Management.

Date: February 22, 2001.

Time: 9 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Louise P. Corman, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1637 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: February 2, 2001.

Time: 8 AM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Joyce A. Hunter, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20872.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 11, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1642 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, January 16, 2001, 1 p.m. to January 16, 2001, 3 p.m., NIEHS, 79 T. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 which was published in the **Federal Register** on November 28, 2000, FR 229:70928.

The telephone conference call meeting will be held on March 19, 2001, from 1 p.m. to 3 p.m. at the same location, instead of January 16, 2000, as previously advertised. The meeting is closed to the public.

Dated: January 4, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1627 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Social Isolation, Loneliness, Health and the Aging Process.

Date: January 25, 2001.

Time: 12 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Health Scientific Administrator, Office of Scientific Review, National Institute on Aging the Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel FTD: Genes, Images and Emotions.

Date: January 30–31, 2001.

Time: 7 PM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Radisson Miyako, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Louise L. Hsu, Scientific Review Administrator, the Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Effects of

Stress, the hypothalamic pituitary-adrenal axis and health in aging.

Date: February 1, 2001.

Time: 1 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Arthur D. Schaerdel, the Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1639 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5(C3)B.

Date: January 29, 2001.

Time: 3 PM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Francisco O. Calvo, Acting Chief, Review Branch, DEA, NIDDK, Room 655, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8897.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1(C2).

Date: February 8, 2001.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate contract proposals.

Place: 6707 Democracy Blvd., 2 Democracy Plaza, RM 653, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carolyn Miles, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 641, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–8897.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1640 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: February 12–13, 2001.

Open: February 12, 2001, 8:30 AM to 5 PM.

Agenda: Discussion of Program Policies and Issues. Agenda: http://www.niehs.nih.gov/dert/c-agenda.htm.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: February 13, 2001, 8:45 AM to 9:15 AM.

Agenda: Report of the Director, DERT.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Closed: February 13, 2001, 9:15 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Anne P. Sassaman, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 12, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–1641 Filed 1–19–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Obligated Service for Mental Health Traineeships: Regulations (42 CFR Part 62a) and Forms—(Extension; OMB No. 0930–0074)—SAMHSA's Center for Mental Health Services (CMHS) awards grants to institutions for training instruction and traineeships in mental health and related disciplines. Graduate student recipients of these clinical

traineeships must perform service, as determined by the Secretary to be appropriate in terms of the individual's training and experience, for a length of time equal to the period of support. The clinical trainees are required to submit SAMHSA Form SMA 111, a payback agreement, SAMHSA Form 111–1, which ensures agency receipt of a termination notice prior to the end of support, and the SAMHSA Form SMA 111–2, which is an annual report on employment status and any changes in name and/or address, to SAMHSA. The annual burden estimate is provided below.

42 CFR Section	No. of respondents	No. of responses/respondent	Hours per response	Total burden hours
64a.104(a–b),(c)(1)—Termination Notice and Exit Interview (Form SMA 111)	100	1	.25	25
64a.104(c)(2,3)—Payback Agreement and Entrance Interview (Form SMA 111–1)	100	1	.25	25
64a.105(b)(2)Annual Payback Activities Certification (Form SMA 111–2	700	1	.18	126
Total burden	900			176

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Stuart Shapiro, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 12, 2001.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 01–1593 Filed 1–19–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in February 2001.

The SAMHSA National Advisory Council meeting will be open and will include a summary and discussion on the implementation of SAMHSA's reauthorization legislation, discussions on SAMHSA's 2001 and 2002 budget, on appropriations and transition issues, on homeless funding issues and options, on SAMHSA's relationships with its Constituency Organizations and a report on the evaluation of SAMHSA's peer review process. In addition, there will be a discussion on ways in which SAMHSA can expand communication with the National Institute of Mental Health, the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, and their National Advisory Councils. Finally, there will be a discussion on the SAMHSA Council and its eight workgroups.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Thursday, February 8, 2001, 9:00 a.m. to 4:50 p.m. (Open); Friday, February 9, 2001, 8:30 a.m. to 12:00 p.m. (Open).

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17–89, Rockville, MD 20857, Telephone: (301) 443–7016; FAX: (301) 443–1587 and e-mail: TVaughn@samhsa.gov.

Dated: January 10, 2001.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 01–1268 Filed 1–19–01; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–08]

Submission for OMB Review: Multifamily Housing Rehabilitation Loan Program for Capital Repairs

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice of proposed information collection requirement.

SUMMARY: The Department of Housing and Urban Development (HUD) is publishing a Housing Notice which enables qualified owners to submit applications, subject to HUD review, for a loan to address the rehabilitation and repair needs of aging multifamily properties. To determine whether a project is qualified to receive funding, HUD will be collecting information from those applicants that wish to participate. The proposed information collection requirement has been submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act.

DATES: Submit comments on or before: January 29, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2374 (This is not a toll-free number) or e-mail to Wayne_Eddins@HUD.gov. Copies of the available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review as required by the Paperwork Reduction Act (44 USC Chapter 35). HUD has requested OMB approval by April 29, 2000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless collection displays a valid control number.

This notice contains the following information:

(1) The title for the collection of information;

(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

(4) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

(5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

Title: Multifamily Housing Rehabilitation Loan Program for Capital Repairs

OMB Control Number: 2502–

Type of submission: Owners of eligible projects (applicants) will be required to submit to HUD information to show that the project meets the basic eligibility criteria, that rehabilitation is necessary to address the physical needs that exist at the property, and that they do not have the financial resources available to address these needs. These requirements will enable eligible applicants to take advantage of a loan that will enable them to resolve the physical deficiencies at the property.

The information includes (a) an application cover letter and description of the proposed use of funds; (b) a worksheet that demonstrates the calculation of the loan amount; (c) an updated Comprehensive Needs Assessment (CNA) including HUD Forms 96001, 96002, and 96003; (d) the project's REAC physical and financial assessment scores; and (e) for profit-motivated owners, evidence of their minimum contribution towards the total cost of the rehabilitation.

Need and use of the information: The information will be used in order to demonstrate the need for assistance in order to correct the physical deficiencies of the property. The Department will review the information to determine whether the basic eligibility criteria is met, if a loan is needed for rehabilitation of the project, and that the project income is not sufficient to support the rehabilitation. Form Number(s): HUD Forms 96001, 96002, 96003.

Respondents: Multifamily property owners, primarily nonprofit entities.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Total burden hours
400		1		4–24		1600–9600

Contact: Eileen Hearty, HUD (202–708–2866, ext. 2641), Joseph Lackey, OMB, (202) 395–7316.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 16, 2001.

Wayne Eddins,

Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–1840 Filed 1–19–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–07]

Notice of Submission of Proposed Information Collection to OMB; Contract Administration—Public and Indian Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* February 21, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0039) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Contract Administration—Public and Indian Housing.

OMB Approval Number: 2577–0039.

Form Numbers: HUD–5372, HUD–5100.

Description of the Need for the Information and its Proposed Use: Public Housing Agencies (PHA) and Indian Housing Authorities (IHA) must maintain certain records or submit certain documents to HUD in conjunction with the award of oversight of construction contracts for development of new low-income housing developments or modernization of existing developments.

Respondents: State, Local or Tribal Government.

Frequent of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	2,199		5.27		1.25		14, 506

Total Estimated Burden Hours: 14,506.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 12, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–1841 Filed 1–19–01; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4632–N–02]

Notice of Funding Availability Fair Share Allocation of Incremental Voucher Funding Fiscal Year 2001; Amendment and Deadline Extension

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA); Amendment to MTCS Threshold.

SUMMARY: On December 13, 2000, HUD published its Notice of Funding Availability for Fair Share Allocation of Incremental Voucher Funding for Fiscal Year 2001 (''Fair Share NOFA''). This notice amends the December 13, 2000 Fair Share NOFA to revise the Multifamily Tenant Characteristics System (MTCS) threshold to include MTCS reporting information ending December 2000, and to extend the application deadline.

DATES: Applications are due on February 20, 2001. Applicants that already submitted applications, need not resubmit a new application, and need not amend their applications. Applicants that already submitted applications, however, may submit new or amended applications if they so choose.

Additional Information

Background—December 13, 2001 NOFA

If you are interested in applying for funding under the Fair Share NOFA, and did not apply earlier, please review the entire Fair Share NOFA, published on December 13, 2000 (65 FR 78040). Except for the amendment made by this document, and the extension of the application deadline, all other provisions of the Fair Share NOFA are unchanged and remain applicable.

The December 13, 2000 Fair Share NOFA will provide you with detailed information regarding the submission of an application, Section 8 program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the program covered by this NOFA.

Amendments to December 13, 2000 Fair Share NOFA

Amendment #1. Section VI(F) of the December 13, 2000 Fair Share NOFA (at 65 FR 78045, third column) is amended to read as follows:

(F) *Multifamily Tenant Characteristics System (MTCS) Reporting Certification.* In order to be eligible to submit an application under this Fair Share NOFA, the PHA must have a minimum reporting rate of not less than 85 percent for housing choice voucher and certificate resident records to HUD's MTCS (see 24 CFR Part 908 and Notices PIH 98–30, 99–2 and 2000–13) for the period ending December 1999, and must submit a certification with its application certifying to having met this requirement.

In the event a PHA received less than an 85 percent rate of reporting under MTCS for this period, the PHA will still be considered to have passed the threshold if: (1) subsequently achieved a minimum reporting rate of not less than 85 percent for housing choice voucher and certificate resident records to HUD's MTCS; or (2) the PHA has requested forbearance from HUD under the applicable procedures in Notice PIH 2000–13 for the semi-annual assessment period ending December 2000, contingent upon HUD approval of the forbearance request. In the latter instance, the PHA must submit a certification with its application indicating that it has either achieved such a minimum reporting rate as of the December 2000 reporting period, or that it has submitted a forbearance request to HUD for the semi-annual assessment period ending December 2000, and acknowledges that the forbearance request must be approved by HUD in order for the PHA to pass the Fair Share NOFA's MTCS threshold requirement.

Amendment #2. Section VII(B)(2)(i) of the December 13, 2000 Fair Share NOFA (at 65 FR 78046, third column) is amended to read as follows:

(i) The applicant has failed to achieve a minimum 85 percent submission rate for housing choice voucher and certificate resident records to HUD's Multifamily Tenant Characteristics System (MTCS), as set forth in 24 CFR part 908 and Notices PIH 98–30, 99–2 and 2000–13, for the periods ending December 1999 and December 2000, and has failed to receive approval for forbearance from HUD for the period ending December 2000.

Dated: January 17, 2001.

Gloria Cousar,

Acting General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 01–1800 Filed 1–17–01; 3:40 pm]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4463–N–06]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of Change in Debenture Interest Rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the ''Act''). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning January 1, 2001 is 7⅛ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2001, is 6 percent.

FOR FURTHER INFORMATION CONTACT: James B. Mitchell, Department of Housing and Urban Development, 451 7th Street, SW., Room 6164, Washington, DC 20410. Telephone (202) 708–3944, extension 2612, or TDD (202) 708–4594 for hearing- or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 2224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning January 1, 2001, is 6 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 6 percent for the 6-month period beginning January 1, 2001. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the first 6 months of 2001.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	on or after	prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	July 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	Jan. 1, 1986	July 1, 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅜	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1996	Jan. 1, 1997
6¾	Jan. 1, 1997	July 1, 1997
7⅛	July 1, 1997	Jan. 1, 1998
6⅜	Jan. 1, 1998	July 1, 1998
6⅛	July 1, 1998	Jan. 1, 1999
5½	Jan. 1, 1999	July 1, 1999
6⅛	July 1, 1999	Jan. 1, 2000
6½	Jan. 1, 2000	July 1, 2000
6½	July 1, 2000	Jan. 1, 2001
6	Jan. 1, 2001	July 1, 2001

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' of interest in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning January 1, 2001, is 7⅛ percent.

HUD expects to publish its next notice of change in debenture interest rates in June 2001.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

(Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715*l*, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: January 12, 2001.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–1707 Filed 1–19–01; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4572–D–16]

Office of the Secretary—Housing-Federal Housing Commissioner; Delegation and Redelegation of Authority Under Section 203(d)(6) of the Federal Property and Administrative Services Act of 1949

AGENCY: Office of the Secretary, Office of Housing, HUD.

ACTION: Notice of delegation and redelegation of authority to recommend to the General Services Administration disposal of surplus real property, including buildings, fixtures and equipment situated thereon and to take all steps necessary, including fixing the sale or lease value, to sell or lease such property for the purpose of self-help housing, in accordance with Section 203(k)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(6)) (FPASA).

SUMMARY: In this Notice, the Secretary delegates to the Assistant Secretary for Housing-Federal Housing Commissioner, who retains and redelegates this authority to the Director, Office of Single Family Assets Management, the authority under Section 203(d)(6) of FPASA to recommend to the General Services Administration disposal of surplus real property, including buildings, fixtures and equipment situated thereon and to take all steps necessary, including fixing the sale or lease value, to sell or lease such property of self-help housing.

EFFECTIVE DATE: January 12, 2001.

FOR FURTHER INFORMATION CONTACT: Director, Office of Single Family assets Management, Room 9162, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 708–1672. This is not a toll-free number. This number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Pub. Law 105–50 (Oct. 6, 1997) amended the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) by adding section 203(k)(6), which authorizes the Secretary of HUD, in consultation with the Administrator of the General Services Administration, to dispose of surplus federal property to states, their political subdivisions or instrumentalities, and nonprofits for the purpose of providing self-help housing to low income individuals. These responsibilities are being delegated by the Secretary to the Assistant Secretary for Housing-Federal Housing Commissioner, who further redelegates them to the Director, Office of Single Family Assets Management.

Accordingly, the Secretary delegates, and the Assistant Secretary for Housing-Federal Housing Commissioner redelegates, authority as follows:

Section A. Authority Delegated and Redelegated

1. The authority of the Secretary under Section 203(k)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) to recommend surplus federal real property to the Administrator of the General Services Administration as needed for providing housing or housing assistance for low-income persons and to take all steps reasonably necessary to sell and lease surplus federal property for that purpose, including fixing sale or lease value, is hereby delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, who retains this authority and redelegates it to the Director, Office of Single Family Assets Management.

Authority: Section 203(k)(6) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)).

Dated: January 12, 2001.

Saul N. Ramirez, Jr.,

Deputy Secretary of Housing and Urban Development.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development.

[FR Doc. 01–1706 Filed 1–19–01; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4643–N–01]

Sections 202 and 811 Capital Advance Programs: Revised Development Cost Limits

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes to the development cost limits for the Sections 202 and 811 Capital Advance Programs. The development cost limits were established in 1989 for the Section 811 group homes and in Fiscal Year (FY) 1999 were increased by 20 percent. Also in FY 1999 the cost limits for elderly projects and independent living projects for persons with disabilities were replaced with the Section 221(d)(3) per unit limits authorized by Congress in 1992.

Even with last year's increase in the development cost limits, a number of nonprofit owners still need additional sources of funding to construct their projects. In an attempt to alleviate this problem, the base development limits from 1989 and 1992 respectively have been adjusted to 2000 using the Federal Reserve Bank of Minneapolis' Consumer Price Index (CPI) calculator which may be found on the internet at http://minneapolisfed.org/economy/calc/cpihome.html.

EFFECTIVE DATE: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th St. SW, Washington, DC 20410, 202–708–3000. (This is not a toll-free number.) For hearing and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 202 (12 U.S.C. 1701q), Supportive Housing for the Elderly, of the National Housing Act of 1959, requires the Secretary to periodically establish development cost limitations by market area for various types and sizes of supportive housing for the elderly by publishing a notice in the **Federal Register**. The statute also requires that the Secretary adjust the cost limitation not less than once annually to reflect changes in the general level of construction, reconstruction or rehabilitation costs.

Section 811 (42 U.S.C. 8013), Supportive Housing for Persons with Disabilities, of the Cranston-Gonzales National Affordable Housing Act contains similar language.

HUD has determined the best way to comply with this requirement is to adjust the base limits annually by changes in the CPI. We found the CPI not only easy to use but meeting Congressional intention.

Therefore, the total development cost of the property or project attributable to dwelling use, adjusted by locality as described below, (less the incremental development cost and the capitalized operating costs associated with any excess amenities and design features the borrower must pay for) may not exceed:

(1) For the elderly.

For non-elevator structures:

$41,238 per family unit without a bedroom;

$47,548 per family unit with one bedroom;

$57,344 per family unit with two bedrooms.

For elevator structures:

$43,398 per family unit without a bedroom;

$49,748 per family unit with one bedroom;

$60,493 per family unit with two bedrooms.

(2) For persons with disabilities.

(a) For independent living projects and dwelling units in multifamily developments, condominium and cooperative housing.

For non-elevator structures:

$41,238 per family unit without a bedroom;

$47,548 per family unit with one bedroom;

$57,344 per family unit with two bedrooms;

$73,400 per family unit with three bedrooms;

$81,770 per family unit with four or more bedrooms.

For elevator structures:

$43,398 per family unit without a bedroom;

$49,748 per family unit with one bedroom;

$60,493 per family unit with two bedrooms;

$78,257 per family unit with three bedrooms;

$85,902 per family unit with four or more bedrooms.

(b) For group homes only.

TYPE OF DISABILITY

No. of residents	Physical and/or developmental	Chronic mental illness
2	$166,022	$160,262
3	178,533	172,340
4	191,045	183,069
5	203,556	193,798
6	216,054	204,527
7	221,547	209,653
8	227,040	214,778
9	236,972	223,212
10	248,013	232,616
11	256,835	240,065
12	266,766	248,498
13	277,308	257,140
14	287,836	265,782
15	298,365	274,409

These cost limits reflect those costs reasonable and necessary to develop a project of modest design that complies with HUD minimum property standards; the accessibility requirements of § 891.120(b); and the project design and cost standards of § 891.120 and § 891.210.

Increased development cost limits.

(1) HUD may increase the development cost limits by up to 140 percent in any geographic area where the cost levels require, and may increase the development cost limits by up to 160 percent on a project-by-project basis. This increase may include covering additional costs to make dwelling units accessible through rehabilitation.

(2) If HUD finds that high construction costs in Alaska, Guam, the Virgin Islands, or Hawaii make it infeasible to construct dwellings, without the sacrifice of sound standards of construction, design, and livability, within the development cost limits provided above, the amount of the capital advances may be increased to compensate for such costs. The increase may not exceed the limits established above (including any high cost area adjustment) by more than 50 percent.

HUD expects to publish its next notice of change in the development cost limits in October 2001.

Dated: January 12, 2001.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 01–1839 Filed 1–19–01; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information from applicants who wish to obtain a permit to conduct activities under a number of wildlife conservation laws, treaties and regulations. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Collection Clearance Officer at the address listed below.

DATES: OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration you must submit comments on or before February 21, 2001.

ADDRESSES: Send your comments and suggestions on specific requirements to the Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503, and to Rebecca Mullin, Collection Clearance Officer, U.S. Fish and Wildlife Service, MS–222–ARLSQ; 4401 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin, Collection Clearance Officer at 703–358–2287, or electronically to *rmullin@fws.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities [see 5 CFR 1320.8(d)]. The U.S. Fish and Wildlife Service (We) has submitted a request to OMB to renew its approval of the collection of information for the Service's license/permit application form number 3–200–19 through 3–200–25 and 3–200–27 through 3–200–53. We are requesting a 3-year term of approval for this information collection activity. A previous 60-day notice on this information collection requirement was published in the July 6, 2000 (65 FR 41716) **Federal Register** inviting public comment. No comments on the previous notice were received. This notice provides an additional 30 days in which to comment on the following information.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (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. The information collections in this program are part of a system of record covered by the Privacy Act [5 U.S.C. 552 (a)].

Federal agencies 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 number. The OMB control number for this collection is 1018–0093.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Convention on International Trade in Endangered Species of Wild Flora and Fauna (TIAS 8249), the Migratory Bird Treaty Act (15 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the Bald and Golden Eagle Protection Act (16 U.S.C. 1361–1407), and Wild Bird Conservation Act (16 U.S.C. 4901–4916), and are contained in Service regulations in Chapter I, Subchapter B of Title 50 Code of Federal Regulations (CFR), Parts 15, 16, 17 and 23. Common permit applications and record keeping requirements have been consolidated in 50 CFR 13, and unique requirements of the various statutes in the applicable Part.

OMB Control Number: 1018–0093.

Service Form Numbers: 3–200–19 through 3–200–25 and 3–200–27 through 3–200–53

Frequency of Collection: On Occasion.

Description of Respondents: Individuals, biomedical companies, circuses, zoological parks, botanical gardens, nurseries, museums, universities, scientists, antique dealers, exotic pet industry, hunters, taxidermists, commercial importers/exporters of wildlife and plants, freight forwarders/brokers, local, State, tribal and Federal governments.

Total Annual Burden Hours: 4500.

Total Annual Responses: 5959.
Total Annual Non-Hour Cost Burden: $149,000.

Dated: January 16, 2001.

Mark Phillips,

Service Information Collection Officer.

[FR Doc. 01–1705 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Policy Regarding Capture and Removal of Southern Sea Otters in a Designated Management Zone

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Statement of policy.

SUMMARY: This notice advises the public that we, the U.S. Fish and Wildlife Service (Service), have determined that we will not capture and remove southern sea otters from the southern California sea otter management zone pending completion of our ongoing reevaluation of the southern sea otter translocation program including the preparation of a supplemental environmental impact statement (EIS) and release of a final evaluation of the translocation program.

On July 19, 2000, we finalized a biological opinion in accordance with section 7(a)(2) of the Endangered Species Act of 1973, as amended (ESA), evaluating containment of southern sea otters, including the capture and removal of otters from a designated management zone. That biological opinion is based on substantial new information on the population status, behavior, and ecology of the southern sea otter, and concludes that continued containment of southern sea otters will likely jeopardize the continued existence of the southern sea otter. On July 27, 2000 (65 FR 46172), we published a notice of intent to prepare a supplemental EIS on the southern sea otter translocation plan.

We have determined, based on our recent biological opinion, that containment of southern sea otters, at present, is not consistent with the requirement under the Act to avoid jeopardy to the species. We are in the process of reevaluating the translocation program and expect to complete a supplemental EIS and finalize our evaluation of the translocation program, including evaluation of the failure criteria developed for the program, by December 2002. We have provided and will continue to provide for public participation during that process. Upon completion of these documents, we will determine whether the southern sea otter translocation plan needs to be modified (including under what circumstances containment of southern sea otters can resume) or terminated to make it consistent with the survival and recovery needs of the species.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Sanders, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003–7726, (telephone: 805/644–1766; facsimile: 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1977 (42 FR 2968), we listed the southern sea otter (*Enhydra lutris nereis*) as a threatened species under the ESA on the basis of its small population size, greatly reduced range, and the potential risk from oil spills. We established a recovery team for the species in 1980 and approved a recovery plan on February 3, 1982. In the recovery plan, we identified the translocation of southern sea otters to a remote location in order to establish a second colony of otters as an effective and reasonable recovery action, although we acknowledged that a translocated southern sea otter population could impact shellfish fisheries that had developed in areas formerly occupied by southern sea otters. Goals cited in the recovery plan included: minimizing risk from potential oil spills; establishing at least one additional breeding colony outside the then-current southern sea otter range; and compiling and evaluating information on historical distribution and abundance, available but unoccupied habitat, and potential fishery conflicts.

The purpose of the translocation program was to establish southern sea otters in one or more areas outside the otters' then-current range to minimize the possibility of a single natural or human-caused catastrophe, such as an oil spill, adversely affecting a significant portion of the population. Ultimately, it was anticipated that translocation would result in a larger population size and a more continuous distribution of animals throughout the southern sea otter's former historical range. We viewed translocation as important to achieve recovery and to identify the optimum sustainable population (OSP) level for the southern sea otter as required under the Marine Mammal Protection Act (MMPA).

Translocation of a listed species to establish experimental populations is specifically authorized under section 10(j) of the ESA. However, the southern sea otter is protected under both the ESA and the MMPA, and the MMPA contains no similar translocation provisions. For southern sea otters, this dilemma was resolved by the passage of Public Law (P.L.) 99–625 (Fish and Wildlife Programs: Improvement; Section 1. Translocation of California Sea Otters) on November 7, 1986, which specifically authorized development of a translocation plan for southern sea otters administered in cooperation with the affected State.

If the Secretary of the Interior chose to develop a translocation plan under P.L. 99–625, the plan was to include: the number, age, and sex of sea otters proposed to be relocated; the manner in which sea otters were to be captured, translocated, released, monitored, and protected; specification of a zone into which the experimental population would be introduced (translocation zone); specification of a zone surrounding the translocation zone that did not include range of the parent population or adjacent range necessary for the recovery of the species (management zone); measures, including an adequate funding mechanism, to isolate and contain the experimental population; and a description of the relationship of the implementation of the plan to the status of the species under the ESA and determinations under section 7 of the ESA. The purposes of the management zone were to facilitate the management of southern sea otters and containment of the experimental population within the translocation zone and to prevent, to the maximum extent feasible, conflicts between the experimental population and other fishery resources within the management zone. Any sea otter found within the management zone was to be treated as a member of the experimental population. The Service was required to use all feasible non-lethal means to capture sea otters in the management zone and return them to the translocation zone or to the range of the parent population.

On March 6, 1987, we completed an intra-Service biological opinion that evaluated translocation of southern sea otters to San Nicolas Island, our preferred translocation site. That biological opinion analyzed effects on the parent population caused by removal of southern sea otters from the population for translocation and the effects on the species of containment (removal) of otters from the management zone. The proposed translocation plan was found to be a well-designed recovery action that maximized the

opportunity for success while minimizing negative impacts on the parent population. We concluded that the southern sea otter translocation plan would not likely jeopardize the continued existence of the species.

In May 1987, we finalized an EIS which analyzed the impacts of establishing a program to translocate southern sea otters from their then-current range along the central coast of California to areas of northern California, southern Oregon, or San Nicolas Island off the coast of southern California. San Nicolas Island was identified as our preferred alternative. A detailed translocation plan meeting the requirements of Pub. L. 99–625 was included as an appendix to the final EIS.

Regulations to implement Pub L. 99–625 were finalized August 11, 1987 and are found at 50 CFR 17.84(d). They provide details of the translocation plan, including criteria for determining whether the translocation program would be considered a failure. Waters surrounding San Nicolas Island were designated as the translocation zone, and all waters south of Point Conception, California, with the exception of waters surrounding San Nicolas Island, were designated as the management zone.

On August 19, 1987, as part of our cooperative actions with the State of California, we signed a Memorandum of Understanding with the California Department of Fish and Game (CDFG) providing for cooperative research and management efforts to promote recovery of the southern sea otter population in California. The agreement also included provisions to minimize conflicts between southern sea otters, existing shellfish fisheries, and other users of marine resources through containment of sea otters that might enter the management zone.

We implemented the translocation plan and began moving groups of southern sea otters from the coast of central California to San Nicolas Island starting on August 24, 1987. In December 1987, in coordination with the CDFG, we began capturing and moving sea otters that entered the designated management zone in an effort to minimize conflicts between sea otters and fisheries within the management zone and to facilitate the management of sea otters at San Nicolas Island.

We released 140 southern sea otters at San Nicolas Island between August 1987 and March 1990. As of March 1991, approximately 14 sea otters (10 percent) were thought to remain at the island. Some sea otters died as a result of translocation; many swam back to the parent population, some moved into the management zone; and the fate of more than half the sea otters taken to San Nicolas is unknown. In 1991, we stopped translocating sea otters to San Nicolas Island, due to low retention and survival. However, we continued monitoring the sea otters remaining in the translocation zone. Sea otter surveys at San Nicolas Island are now conducted by the Biological Resources Division of the U.S. Geological Survey on a bimonthly basis.

Sea otters were captured and removed from the management zone until February 1993. At that time, two sea otters that had been recently captured in the management zone were found dead shortly after their release in the range of the parent population. A total of four sea otters were known or suspected to have died within 2 weeks of being moved from the management zone. We suspended all sea otter capture activities in the management zone to evaluate sea otter capture and transport methods. Results of the evaluation were inconclusive, but we remained concerned that capture and transport of sea otters found in the management zone could result in the death of some animals. Between December 1987 and February 1993, 24 sea otters were captured and removed from the management zone and returned to the parent range. Of these, 2 sea otters were captured twice in the management zone after being moved to the northern end of the parent range, suggesting that capture and relocation were ineffective. We discontinued containment efforts after 1993 in response, in part, to our concerns about the unexpected mortalities of otters experienced during or shortly following their removal from the management zone. We also recognized that techniques at the time, which proved to be less effective than originally predicted and were labor intensive, were not a feasible means of containing otters. In 1997, CDFG announced that they also would no longer be able to assist with sea otter captures in the management zone.

A group of approximately 100 southern sea otters moved from the parent range into the northern end of the management zone in 1998. At the same time, range-wide counts of the southern sea otter population indicated a decline of approximately 10 percent since 1995. Given the decline in the southern sea otter population, we asked the Southern Sea Otter Recovery Team, a team of biologists with special expertise in sea otter ecology, for a recommendation regarding the capture and removal of sea otters in the management zone. The recovery team recommended that we not move sea otters from the management zone to the parent population because moving large groups of sea otters and releasing them within the parent range would be disruptive to the social structure of the parent population.

In August 1998, we held two public meetings to provide information on the status of the translocation program, identify actions we intended to initiate, and solicit general comments and recommendations. At these meetings, we announced that we would reinitiate consultation under section 7 of the ESA for the containment program and begin the process of evaluating failure criteria established for the translocation plan. The technical consultant group for the Southern Sea Otter Recovery Team, composed of representatives from the fishery and environmental communities as well as State and Federal agencies, was also expanded to assist with evaluating the translocation program. We provided updates on the translocation program and status of the southern sea otter population to the California Coastal Commission, Marine Mammal Commission, and California Fish and Game Commission in 1998 and 1999.

In March 1999, we distributed our draft evaluation of the translocation program to interested parties. The draft document included the recommendation that we declare the translocation program a failure because fewer than 25 sea otters remained in the translocation zone and reasons for the translocated otters' emigration or mortality could not be identified and/or remedied. We received substantive comments from agencies and the public following release of the draft for review.

We prepared a draft biological opinion evaluating southern sea otter containment and distributed it to interested parties for comment on March 19, 1999. We completed a final opinion on July 19, 2000. Our reinitiation of consultation was prompted by the receipt of substantial new information on the population status, behavior, and ecology of the southern sea otter that revealed effects of containment that were not previously considered. Specifically, the biological opinion noted that in 1998 and 1999 southern sea otters moved into the management zone in much greater numbers than had occurred in prior years; analysis of carcasses indicated that southern sea otters were being exposed to environmental contaminants and diseases which could be affecting the health of the population; range-wide counts of southern sea otters found

numbers were declining; recent information, in particular the implications of the effects of the Exxon Valdez oil spill, indicated that sea otters at San Nicolas Island would not be isolated from the potential effects of a single large oil spill; and the capture and release of large groups of sea otters was likely to result in substantial adverse effects on the parent population. The Service concluded that reversal of the southern sea otter population decline and expansion of the southern sea otter's population distribution are essential to its survival and recovery. The Service further concluded that continuation of the containment program, while restricting the southern sea otter to the area north of Point Conception, will likely exacerbate recent sea otter population declines and increase vulnerability to a catastrophic oil spill or other man-made or natural stochastic events, and, therefore, likely jeopardize the continued existence of the species.

On February 8, 2000, a draft revised recovery plan for the southern sea otter was released for public review and comment (65 FR 6221). Based on the observed decline in abundance and shift in distribution of the southern sea otter population, the recovery team recommended in the draft revised recovery plan that it would be in the best interest of the southern sea otter to declare the experimental translocation of southern sea otters to San Nicolas Island a failure and discontinue maintenance of the management zone. The recovery team's recommendation will be fully evaluated through our ongoing NEPA process on the translocation action.

Current Status

In 4 of the past 5 years, population counts have shown a decline in southern sea otters. Survey data collected in spring 2000 were encouraging, with the number of southern sea otters counted approaching the highest recorded count for the population. However, more survey data are needed to determine whether the spring 2000 count was an anomaly or the beginning of a positive trend in southern sea otter population growth. In spite of more than 140 sea otters having been translocated and evidence of reproduction, the population of sea otters at San Nicolas Island currently comprises only approximately 20 adults.

To date, the southern sea otter translocation program has not met the primary goal of establishing a viable population of southern sea otters at San Nicolas Island. In the translocation plan we determined that a self-sustaining colony size of 150 southern sea otters would be necessary to consider the population at San Nicolas Island viable. Based on trends since the translocation program began and current circumstances, the best scientific information indicates that a population of this size may not be attainable.

On July 27, 2000 (65 FR 46172), we published in the **Federal Register** a notice of intent to prepare a supplemental EIS on the southern sea otter translocation program. The need for a supplemental EIS is based on changed circumstances and new information since the original EIS on translocation of southern sea otters was prepared in 1987. Public scoping meetings were held on August 15 and 17, 2000, with the purpose of soliciting information to be used in defining the overall scope of the supplemental EIS, identifying significant issues to be addressed, and identifying alternatives to be considered. The technical consultants to the Southern Sea Otter Recovery Team met to discuss the supplemental EIS on September 26, 2000. We expect a draft supplemental EIS to be completed and released for public comment by September 2001 and a final document to be completed approximately a year later. The draft evaluation of the translocation program released in March 1999 will be finalized following further opportunity for public participation in the decision-making process and completion of the EIS.

Public Law 99–625 and the ESA

Section 7 of the ESA mandates that no Federal agency—including the U.S. Fish and Wildlife Service—may take any action that is likely to jeopardize the continued existence of a listed species. The translocation plan we developed in 1987 pursuant to the discretionary authority vested in the Secretary of the Interior was a Federal action for which consultation was required. Therefore, prior to implementing the translocation program, we conducted an internal consultation under section 7. That internal consultation resulted in a biological opinion dated March 6, 1987, in which we concluded that implementation of the translocation plan as proposed was not likely to jeopardize the southern sea otter. Specifically we concluded that implementing zonal management of sea otters by establishing a translocation zone surrounding San Nicolas Island to which otters would be moved, establishing a surrounding ''otter free'' management zone south of Point Conception from which otters would be removed, demarcating the southward limit of the parent range at Point Conception to allow for range expansion by the parent population, removal and translocation of up to 250 sea otters from the parent population to San Nicolas Island, and containment of otters by non-lethal means and their return to the parent population or San Nicolas Island would not likely jeopardize the continued existence of the species. Had we concluded in our 1987 biological opinion that implementation of the translocation plan, or any of its components, would result in jeopardy to the sea otter, the program could not have legally proceeded as implementation would have violated the ESA.

Our implementing regulations at 50 CFR 402.16(b) require any Federal agency to reinitiate consultation if new information reveals that an action may affect a listed species in a manner or to an extent not previously considered. Significant new information that has come to light since inception of the translocation plan has included evidence of: (1) Recent annual declines in the parent population; (2) exposure of otters to contaminants; (3) movement of significant numbers of otters from the parent range into the management zone; (4) potential effects of a single, large oil spill on the entire sea otter population, including San Nicolas Island; and (5) substantial adverse impacts to the parent population likely to result from reintroduction of large numbers of contained otters. Pursuant to our section 7 responsibilities, we reinitiated consultation in 1999 on the containment component of the translocation plan to consider the significant new information about the potential effects of containment on the parent population of southern sea otters. In our July 2000 biological opinion we concluded that containment of sea otters from the management zone and reintroduction back into the parent population would likely jeopardize the continued existence of the species. In light of the determination from our July 2000 biological opinion, we may not proceed with containment until the factors that may cause jeopardy to the southern sea otter are addressed.

Our determination is consistent with both the structure and intent of Pub. L. 99–625. The statute as written recognizes the applicability of the ESA generally—and section 7 in particular—to the translocation plan throughout its various subsections (*e.g.,* sections 1(b)(6), 1(c), 1(d), 1(e), and 1(f)). Further, the intent of Pub. L. 99–625 was to allow the Secretary to implement what was then identified as a critical recovery action under the 1982 recovery plan ,

and any implementation contrary to this recovery goal would contradict the purpose of the statute. Indeed, we have determined that containment under the present circumstances could lead to extinction of the species. Finally, apart from the specific references to section 7 throughout Pub. L. 99–625, the statute's discretionary grant of authority to the Secretary to develop and implement a translocation plan in the first instance brings the Secretary's affirmative decision to develop—and to continue to implement—the plan squarely within the universe of federal actions to which section 7 of the ESA applies. Having concluded under section 7 that implementation of the containment component of the plan would likely jeopardize the sea otters' continued existence, we may not proceed with that aspect of the translocation plan.

Without the legal protection afforded by section 7, actions undertaken by the Service, an authorized State agency, or an authorized agent of either the Service or such agency to effect containment are not insulated from liability under section 9 of the ESA and implementing regulations, which prohibit take of listed species unless otherwise authorized or exempt. Section 1(f) of Pub. L. 99–625 declares that no act by the Service or authorized State agency personnel to effect the translocation or management of a sea otter under the translocation plan may be treated as a violation of the ESA or the Marine Mammal Protection Act. However, the protective shield provided by this section no longer applies where the Service has determined that a component of the underlying plan itself—containment—is likely to jeopardize the continued existence of the sea otter. Under the present circumstances, any act by Service or authorized State agency personnel to remove otters from the management zone and relocate them to the parent population that results in take of an otter in either the management zone or the parent population would be in violation of section 9 of the ESA and subject to appropriate enforcement action.

Service's Position

Our mission is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. The southern sea otter is threatened with extinction. The southern sea otter translocation plan was developed to help this species recover by establishing an experimental population. We have yet to establish an experimental population, the southern sea otter continues to be threatened with extinction, and we have concluded that implementing the containment provisions of the southern sea otter translocation plan under the current circumstances will likely jeopardize the continued existence of the species.

We are preparing a supplemental EIS to evaluate new information regarding the translocation program and the status of the sea otter and to consider whether modifications to the southern sea otter translocation program as presently structured, or termination of the program, would be appropriate. We will also finalize our evaluation of the translocation program, including analysis of the failure criteria established for the program. Containment of southern sea otters under the current circumstances would violate our duty under the Endangered Species Act to avoid any action that would likely jeopardize the continued existence of the species. Therefore, we will not capture and remove sea otters from the management zone until we complete our reevaluation of the translocation program unless, during this interim period, new information or changed circumstances indicate that containment no longer poses likely jeopardy to the species. We will continue to solicit public input and comments regarding the translocation plan as part of our NEPA review and any rulemaking process.

Dated: January 16, 2001.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 01–1799 Filed 1–17–01; 3:23 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

[AZ–070–01–1232–EA, SRP–070–01–07/08]

Bureau of Land Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of Selected Public Lands in La Paz County, Arizona, during the operation of the 2001 Whiplash Parker 400K/200K (kilometer) Desert Races.

SUMMARY: The Lake Havasu Field Office Manager announces the temporary closure of selected public lands under its administration in La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 2001 Whiplash Parker 400K/200K Desert Races.

DATES: February 2, 2001, through February 4, 2001.

SUPPLEMENTARY REGULATIONS: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the race course comprised of BLM lands, roads and ways located two miles either side of:
   (a) Shea Road from the eastern boundary of the Colorado River Indian Tribes Reservation to the junction with Swansea Road, and two miles either side of Swansea Road from its junction with Shea Road to the eastern bank of the Central Arizona Project Canal.
   (b) Swansea Road from its junction with Shea Road to the Four Corners intersection. The unpaved road from Midway north to Mineral Wash, and then west to the CAP Canal is closed to public use from 6:00 a.m. Friday, February 2, 2001 to 6:00 p.m. Sunday, February 4, 2001.

2. The entire designated race course is closed to all vehicles except authorized and emergency vehicles.

3. Vehicle parking or stopping in areas affected by the closure is prohibited except in the designated spectator areas. Emergency parking for brief periods of time is permitted on roads open for public use.

4. Spectator viewing on public land is limited to the designated spectator areas located south and north of Shea Road, as signed, approximately eight miles east of Parker, Arizona.

5. The following regulations will be in effect for the duration of the closure. Unless otherwise authorized, no person shall:
   a. Camp in any area outside of the designated spectator areas.
   b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.
   c. Spectate or otherwise be located outside of the designated spectator or pit areas.
   d. Possess or use fireworks.
   e. Operate any vehicle, other than registered event vehicles, which is not legally registered for street and highway operation, including operation of such a vehicle in any area affected by this closure.
   f. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature.

g. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.
h. Fail to keep their campsite/viewing area free of trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

Signs and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and/or the event sponsor. The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Arizona or La Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Authority for closure of public lands is found in 43 CFR 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Bryan Pittman, District Law Enforcement Ranger, or Myron McCoy, Outdoor Recreation Planner, Bureau of Land Management Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (520) 505–1200.

Dated: January 10, 2001.

Donald Ellsworth,

Field Manager, Lake Havasu Field Office.

[FR Doc. 01–1605 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–074–1220–PA–241A]

Notice of Proposed Closure of Certain Lands to Off-Highway Vehicle Use to Implement the Medicine Lodge Resource Management Plan, and Big Desert Management Framework Plan, Upper Snake River District, Idaho

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Idaho Falls Field Office, Bureau of Land Management (BLM), proposes to close or seasonally restrict certain public lands in the Upper Snake River District, Idaho, to use by motor vehicles, including off-highway vehicles, snowmobiles and other snow machines under BLM's off-highway vehicle regulations. The notice affects lands covered by two land use plans and several activity level plans. The Medicine Lodge Resource Management Plan and the Big Desert Management Framework Plan described certain lands as ''Closed to Off Highway Vehicles,'' and classified others as ''Semi-Primitive Non-Motorized.'' The purpose of these proposed closures is to manage the specified lands to protect watershed, wildlife, and scenic values from damage caused by off-highway vehicle use, and to prevent undue and unnecessary disturbance to big game populations migrating to crucial winter range habitat.

DATES: You must submit your comments to BLM at the appropriate address below on or before February 21, 2001. BLM will not necessarily consider any comments received after that date in making its decisions on the final order.

ADDRESSES: Anyone wishing to make comments may submit them in person or by mail to the Field Manager, BLM Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, ID 83401–2100.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedure

Your comments on the proposed closure order should be specific, should be confined to issues pertinent to the proposed closure order, and should explain the reason for any recommended change. Where possible, your comments should refer to the specific section or paragraph of the proposal or to the specific tract of land that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final closure order comments that BLM receives after the close of the comment period or comments delivered to an address other than those listed above.

BLM will make your comments, including your name and address, available for public review at the Idaho Falls Field Office during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Under certain conditions, BLM may keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

The authority for these closures is 43 CFR 8342.2(c), which directs BLM to ''* * * take action by marking and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable thereto. The authorized officer shall make appropriate informational material, including maps, available for public review.''

The proposed closures implement the Medicine Lodge Resource Management Plan (RMP), the Big Desert Management Framework Plan (MFP) and associated activity level plans include the Sands Habitat Management Plan, Tex Creek Wildlife Management Area Plan, and the Snake River Activity/Operations Plan, and will remain in effect permanently with the publication of the final notice. This notice identifies by legal land description the precise areas that are closed to implement the plans.

There are several closure areas identified in the Medicine Lodge RMP. This notice only deals with the Tex Creek/Willow Creek, Big Bend Ridge, and Stinking Springs areas as well as river bottoms along the South Fork of the Snake River. The Big Desert MFP has identified a critical wildlife area along the main stem of the Snake River below Idaho Falls, Idaho.

The Tex Creek and Willow Creek areas are crucial wildlife areas lying east of Idaho Falls, Idaho. A majority of the lands are included in the Tex Creek Wildlife Management Area and are cooperatively managed with Idaho Dept. of Fish & Game and Bureau of Reclamation lands.

The closure affecting the Big Bend Ridge area implements the Sands Habitat Management Plan. An objective of this plan is to minimize the degree of harassment of elk due to human activity within the habitat management plan boundaries from November 15 to April 15 of the next year annually. Within the overall area, a seasonal ''No Human Entry'' closure is already in effect from January 1 through April 30 of each year throughout the majority of the wintering big game range. This closure notice would cover the transition area or migration route to the winter range and protect the habitat from OHV use. The established designated routes across public land along Fourth of July Creek, Saddorous Hill, and Hidden Reservoir/Jackson Mill roads will remain open.

Areas along the South Fork of the Snake River includes the Stinking Springs area and critical floodplain river bottom lands. The Snake River Activity/Operations Plan restricted OHV use to a

few existing roads and trails such as the Stinking Springs Trail. The river bottom lands are experiencing increases in new OHV trails. BLM considers these lands sensitive riparian habitat areas. Therefore, BLM needs to restrict OHV use on these lands.

Under the authority and for the reasons stated in the Background section, the Idaho Falls Field Office, Bureau of Land Management, issues the following closure notice.

Closure of Certain Public Lands in the Upper Snake River District to Motor Vehicle Use

Tex Creek/Willow Creek Area

Effective (30 days after the date of publication of final closure order in the **Federal Register**), Bureau of Land Management (BLM)—administered public lands located in the Tex Creek/Willow Creek area, described below, that are designated as ''Closed to Off Highway Vehicles (OHV)'' or ''Semi Primitive Non-motorized'' in the Medicine Lodge Resource Management Plan are closed to motor vehicle use, including off highway vehicles (OHV) and snow machines. The only exceptions to this closure are administrative use of vehicles by the Bureau of Land Management and use by BLM permittees, including State and local government agencies. The area is bounded generally by the Bone Road on the west, Caribou National Forest on the east, the Bonneville and Bingham County lines on the south, and Ririe Reservoir to the north, and is located within the Tex Creek Wildlife Management Area. The legal description of the lands is as follows:

Boise Meridian, Idaho

T. 1 N., R. 40 E.,
Sec. 1, W½ SE¼;
Sec. 4, S½ SE¼;
Sec. 5, Lots 3 and 4, S½ NW¼, SW¼ NE¼, W½ SE¼, SE¼ SE¼, SW¼;
Sec. 7, E½ SE¼, NW¼ SE¼;
Sec. 8, W½ SW¼, N½ NE¼, NE¼ NW¼;
Sec. 9, S½ NE¼, S½ NW¼;
Sec. 10, NW¼, NW¼ NE¼;
Sec. 12, E½ NE¼;
Sec. 17, W½, W½ SE¼, SW¼ NE¼;
Sec. 18, E½ E½;
Sec. 19, N½ NE¼;
Sec. 20, NW¼;
Sec. 21, SE¼ SW¼;
Sec. 28, N½ NW¼, SE¼ NW¼, E½ SW¼, SW¼ SW¼, W½ SE¼, SE¼ SE¼;
Sec. 29, N½ N½;
Sec. 32, Lots 1 and 2, N½ SE¼, S½ NE¼, NE/14 NE¼;
Sec. 33, Lots 1–4, NW¼ NE¼, NE¼ NW¼, W½ NW¼, N½ SW¼, N½ SE¼;
Sec. 34, SW¼ SW¼.
T. 1 N., R. 41 E.,
Sec. 7, Lots 2 and 3, SW¼ SE¼, SE¼ SW¼;
Sec. 14, SW¼, S½ NW¼, NE¼ NW¼, SW¼ SE¼;
Sec. 15, SE¼, N½ SW¼, SE¼ NE¼, NW¼ NE¼;
Sec. 17, NW¼ NW¼;
Sec. 21, NE¼;
Sec. 23, W½, S½ NE¼, NW¼ NE¼;
Sec. 26, N½ SW¼, SW¼ NW¼;
Sec. 27, S½ NE¼, N½ SW¼, SE¼ NW¼.
T. 2 N., R. 40 E.,
Sec. 23, N½ SW¼, SW¼ SW¼, SE¼ NE¼, NE¼ NE¼;
Sec. 24, S½ NW¼, NE¼ SW¼, SE¼ SE¼;
Sec. 25, E½ SW¼, W½ SE¼.
T. 2 N., R. 41 E.,
Sec. 35, SE¼ NW¼.
T. 1 S., R. 40 E.,
Sec. 2, SW¼, S½ SE¼;
Sec. 3, Lot 1, E½ SE¼;
Sec. 10, E½ NE¼, NE¼ SE¼;
Sec. 11, E½, NW¼, N½ SE¼, SE¼ SW¼;
Sec. 12, SW¼, S½ NW¼, S½ SE¼;
Sec. 13, E½, E½ W½;
Sec. 24, NE¼, N½ SE¼, SW¼ SE¼;
Sec. 25, W½ NE¼.
T. 1 S., R. 41 E.,
Sec. 7, Lots 3 and 4;
Sec. 18, Lots 1–4;
Sec. 19, Lots 1–4, SE¼, E½ SW¼, S½ NE¼, SE¼ NW¼;
Sec. 20, SW¼, W½ SE¼, SW¼ NW¼;
Sec. 30, E½E½.
T. 1 S., R. 42 E.,
Sec. 18, NE¼, SE¼ NW¼, N½ SE¼, SE¼ SE¼.

Stinking Springs

Effective (30 days after the date of publication of final closure order in the **Federal Register**), Bureau of Land Management (BLM)-administered public lands located in the Stinking Springs area north of the South Fork of the Snake River near Heise, Idaho, described below, are closed to motor vehicle use, including off-highway vehicles (OHV) and snow machines. The only exceptions to this closure are administrative use of vehicles by the Bureau of Land Management and use by BLM permittees, including State and local government agencies. The Stinking Springs Trail shall remain open to all modes of travel from 4/15 to 11/15 of each year. Snow machines and full size passenger vehicles are prohibited year round. The area is bounded generally by the South Fork of the Snake River on the south and west, the Kelly Canyon Road and Targhee National Forest on the north and east. The legal description of the lands is as follows:

Boise Meridian, Idaho

T. 4 N., R. 41 E.,
Sec. 32, SE¼, SE¼ NE¼, and lands east of the Kelly Canyon Road in the NE¼ NE¼, NW¼ NE¼, SW¼ NE¼, NE¼ SW¼;
Sec. 33, All.
T. 3 N., R. 41 E.,
Sec. 2, SW¼;
Sec. 3, All;
Sec. 4, SE¼, SE¼ SW¼, NE¼ SW¼, NW¼ SW¼;
Sec. 5, NW¼ NE¼;
Sec. 8, Lots 6 and 8;
Sec. 9, Lots 2 and 3, NE¼, NW¼, SE¼, NE¼ SW¼;
Sec. 10, NW¼, SW¼, NE¼ NE¼, NW¼ NE¼, SW¼ NE¼;
Sec. 11, Lot 2, N½ NW¼;
Sec. 15, Lots 7 and 8, NW¼ NW¼;
Sec. 16, Lots 5 and 6.

Big Bend Ridge

Effective (30 days after the date of publication of final closure order in the **Federal Register**), BLM-administered public lands located in the Rattlesnake-Box Canyon, July Creek and Blue Creek areas, described below, are closed to motor vehicle use, including off-highway vehicles (OHV) and snow machines from October 1 to December 31 of each year, except on designated roads. The only exceptions to this closure are administrative use of vehicles by the Bureau of Land Management and use by BLM permittees, including State and local government agencies. The area is bounded by the Targhee National Forest on the east and north, Ashton Reservoir on the south, and the Sand Creek road on the west. The legal description of the lands is as follows:

Boise Meridian, Idaho

T. 9 N., R. 42 E.,
Sec. 1, Lot 4, SW¼ NW¼, W½ SW¼;
Sec. 2, All;
Sec. 3, All;
Sec. 4, All;
Sec. 5, Lots 1, 2, and 4, S½ NE¼, SE¼, SW¼ NW¼;
Sec. 6, Lot 1, SE¼ NE¼;
Sec. 8, NE¼, E½ SE¼;
Sec. 9, All;
Sec. 10, W½, SE¼, N½ NE¼, SW¼ NE¼;
Sec. 11, NW¼ NW¼, NW¼ NE¼;
Sec. 12, NE¼ NW¼;
Sec. 15, NW¼, NW¼ SE¼, W½ NE¼, NE¼ NE¼;
Sec. 17, SE¼, E½ NE¼, S½ SW¼;
Sec. 18, SE¼ SE¼;
Sec. 20, N½ N½;
Sec. 21, N½ N½, SE¼ NW¼, SW¼ NE¼.
T. 10 N., R. 42 E.,
Sec. 30, Lot 5;
Sec. 31, Lots 1–8, NE¼ SE¼.
T. 10 N., R. 41 E.,
Sec. 1, Lots 1–3, S½ N½, S½;
Sec. 2, SE¼;
Sec. 8, SE¼ SE¼;
Sec. 11, NE¼ NW¼, N½ NE¼;
Sec. 12, NW¼ NW¼, SW¼ SE¼, E½ E½;
Sec. 13, NE¼, NE¼ SE¼, NW¼ NW¼, SE¼ SW¼.
T. 11 N., R. 41 E.,
Sec. 29, S½ SW¼;
Sec. 32, NW¼.

South Fork of the Snake and Main Snake Rivers

Effective (30 days after the date of publication of final closure order in the **Federal Register**), BLM-administered public lands located in the South Fork of the Snake and Main Snake River corridors, described below, designated as Closed to Off-Highway Vehicles (OHV) in the Snake River Activity/Operations Plan, and Big Desert MFP are closed to motor vehicle use, including off-highway vehicles (OHV) and snow machines. The only exceptions to this closure are administrative use of vehicles by the Bureau of Land Management and use by BLM permittees, including State and local government agencies. The areas are bounded generally by the South Fork Snake and Main Snake Rivers. The legal description of the lands is as follows:

Dry Canyon: Those portions of the following described lands lying east and west of the South Fork Snake River.

Boise Meridian, Idaho

T. 2 N., R. 43 E.,
Sec. 5, Lots 1–4;
Sec. 6, Lots 1–3, Lots 8–13, E½ SW¼, and those portions of BLM lying within Lots 5–7;
Sec. 7, Lots 2, 3, and 6, and those portions of BLM lying within Lot 4.

Warm Springs: Those portions of the following described lands lying east of the South Fork Snake River.

Boise Meridian, Idaho

T. 3 N., R. 42 E.,
Sec. 12, Lots 3–6, 10 and 11;
Sec. 13, Lots 10 and 11.

Mud Creek Bar: Those portions of the following described lands lying east of the South Fork Snake River.

Boise Meridian, Idaho

T. 3 N., R. 42 E.,
Sec. 4, Lots 9 and 10;
Sec. 5, Lots 15 and 16;
Sec. 9, Lot 11.

Wolf Flat: Those portions of the following described lands lying north of the South Fork Snake River.

Boise Meridian, Idaho

T. 3 N., R. 41 E.,
Sec. 10, Lots 1 and 2;
Sec. 11, Lots 3 and 4;
Sec. 15, Lot 6.

Kelly Island: Those portions of the following described lands lying east and north of the South Fork Snake River and west and south of the South Fork county road (USFS road 206).

Boise Meridian, Idaho

T. 3 N., R. 41 E.,
Sec. 5, Lots 13 and 14.
T. 4 N., R. 41 E.,
Sec. 31, Lots 13 and 14;
Sec. 32, Lot 3.

Kelly Canyon: Those portions of the following described lands lying north and west of the Kelly Canyon Road.

Boise Meridian, Idaho

T. 4 N., R. 41 E.,
Sec. 29, Lot 5, SE¼, E½ SW¼, SW¼ SW¼, SW¼ NE¼, S½ NW¼;
Sec. 32, NW¼, NE¼ SW¼, N½ NE¼, SW¼ NE¼.

Cress Creek Trail: Those portions of the following described lands lying north and east of the South Fork Snake River.

Boise Meridian, Idaho

T. 4 N., 40 E.,
Sec. 23, Lots 6 and 11, SE¼ SE¼, W½ SE¼, NE¼ SW¼;
Sec. 26, Lots 8 and 9.

Twin Bridges: Those portions of the following described lands lying east of the south bridge and up the South Fork Snake River.

Boise Meridian, Idaho

T. 4 N., 40 E.,
Sec. 21, Lots 5–13.

Lorenzo Bridge: Those portions of the following described lands lying east of the South Fork Snake River.

Boise Meridian, Idaho

T. 5 N., R. 39 E.,
Sec 28, Lots 18–21, excluding the boat ramp access area.

Menan Bridge: Those portions of the following described lands lying South of the Snake River and east of the Menan Bridge.

Boise Meridian, Idaho

T. 5 N., R. 38 E.,
Sec 22, Lots 15, 16, 19, and 20.

Kellers Island: Those portions of the following described lands lying west of the Snake River.

Boise Meridian, Idaho

T. 5 N., R. 38 E.,
Sec 7, Lot 13;
Sec. 18, Lots 16 and 17.

Deer Parks: Those portions of the following described lands lying south of the Butte Market Lake Canal and north of the Snake River.

Boise Meridian, Idaho

T. 5 N., R. 37 E.,
Sec 12, Lots 9–12;
Sec. 13, Lots 9 and 10;
Sec. 14, Lots 9–12.

Ducks Unlimited Tract C: Those portions of the following described lands lying east of the Snake River.

Boise Meridian, Idaho

T. 4 N., R. 37 E.,
Sec 10, Lots 7, 15–17.

Firth River Bottom: Those portions of the following described lands lying west of the Snake River and east of the Peoples Canal.

Boise Meridian, Idaho

T. 1 South, R. 36 E.,
Sec 26, Lots 9–11, and 17.

Firth River Bottom: Those portions of the following described lands lying east of the Snake River and east of the Peoples Canal.

Boise Meridian, Idaho

T. 1 South, R. 36 E.,
Sec 27, Lot 6;
Sec. 34, Lots 8 and 15.

FOR FURTHER INFORMATION CONTACT: Jeff Gardetto, Wildlife Management Biologist, (208) 524–7545.

Dated: January 8, 2001.

Joe Kraayenbrink,

Idaho Falls Field Manager.

[FR Doc. 01–1727 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–GG–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–6332–AA; HAG01–0074]

Notice of Availability of the Hellgate Recreation Area Management Plan/Draft Environmental Impact Statement (DEIS) for the 27 mile section of the Rogue River from the mouth of the Applegate River to Grave Creek

AGENCY: Bureau of Land Management, Medford District Office, Grants Pass Resource Area.

SUMMARY: In accordance with Section 202 of the National Environmental Policy Act of 1969 and Section 202 of the Federal Land Policy and Management Act of 1976, a Recreation Area Management Plan and DEIS have been completed for a portion of the Medford District. The DEIS describes and analyzes future options for managing the 27 mile section of the Rogue River (from the mouth of the Applegate River to Grave Creek) in southern Josephine County, Oregon.

The need for action is based on BLM visitor use reports that show major increases in water-based visitor use activities, on a recreation use study, and on a scoping effort which identified visitor use conflicts. The purpose of the action is to ensure recreational use levels are in alignment with the purposes of the Wild and Scenic Rivers Act of October 2, 1968.

All of the recommend planning issues share one topic: The growth of different

types of recreation use on the river, and how much recreation use can and should the river support. The identified issues are motorized boating, non-motorized float boating, non-mortorized boat angling, user fees, camping, trails, day-use areas, public access and visitor services.

The DEIS analyzes five alternatives ranging from fewer watercraft and less visitor use to maximum watercraft and visitor use. Open houses will be held on January 18, 2001, from 7 p.m. to 10 p.m. at the City of Grants Pass Council Chambers, 101 NW A. Street in Grants Pass, and on January 24, 2001, from 7 p.m. to 10 p.m. at the Medford District Office, 3040 Biddle Road, in Medford.

DATES: Comments will be accepted until February 24, 2001. Informal meetings may be scheduled before the comment period closes.

ADDRESSES: Comments should be addressed to Cori Cooper, Planning Team Leader, Grants Pass Resource Area, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. Individual copies of the DEIS may be obtained by contacting the Planning Team Leader.

Comments, including names and addresses, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law.

Dated: January 9, 2000.

Abbie Jossie,

Field Manager, Grants Pass Resource Area.

[FR Doc. 01–1726 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430-HN–003E; MTM 84984, MTM 86124]

Public Notice—Jurisdiction Transfer as Required by the Crow Boundary Settlement Act of 1994; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice correction.

SUMMARY: This notice corrects the total acreage figure published in the **Federal Register**, 65 FR 59011, dated October 3, 2000, for the transfer of exclusive jurisdiction and administration of the surface estate from the Bureau of Land Management to the United States of America, Bureau of Indian Affairs, in trust for the Crow Indian Tribe.

On page 59011, column 3, the aggregate 12,465.32 acres is corrected to read ''The areas described aggregate 12,431.59 acres in Big Horn and Yellowstone Counties, Montana.'' This correction does not alter the effective date of the original notice.

FOR FURTHER INFORMATION CONTACT: Russell Sorensen, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–8036.

Dated: January 8, 2001.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 01–1730 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–01–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet Tuesday, February 20, 2001 from 8:00 a.m. to 5:00 p.m. local time, and on Wednesday, February 21, 2001, from 8:00 a.m. to 12 noon local time. Submit written comments pertaining to the Advisory Board meeting no later than close of business February 28, 2001.

ADDRESSES: The Advisory Board will meet at the Bureau of Land Management's National Training Center at 9829 N. 31st Avenue, Phoenix, Arizona, in the Oregon Room.

Send written comments pertaining to the Advisory Board meeting to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147.

FOR FURTHER INFORMATION CONTACT: Janet Nordin, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. Nordin at any time by calling the Federal Information Relay Service at 1–800–877–8339.

Electronic Access and Filing Address. Speakers may transmit comments electronically via the Internet to: *Janet_Nordin@blm.gov.* Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Tuesday, February 20, 2001

Introduction
Approval of September Board Minutes
Research
Marketing Study
Subcommittee Feedback
Wild Horse and Burro Strategy Update
Public Comment
Adjourn

Wednesday, February 21, 2001

Reports
Emerging issues
Close Out/Recommendations
Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations [41 CFR 101–6.1015(b)], require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on February 20, 2001 at the appropriate point in the agenda. This opportunity is anticipated to occur at 4:00 p.m. local time. Persons wishing to make statements should register with the BLM by noon on February 20, 2001, at the meeting location. Depending on the

number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if you do not want the BLM to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. The BLM will honor your request to the extent allowed by law. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses (or e-mail addresses).

Dated: January 11, 2001.

Henri R. Bisson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. 01–1679 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–28578]

Public Land Order No. 7478; Opening of Public Land Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 40 acres of public land withdrawn by a Secretarial order which established Bureau of Land Management Power Site Reserve No. 105. This action will allow for disposal of the land and retain the power rights to the United States. The land has been and will remain open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: April 23, 2001.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVCO–532, it is ordered as follows:

1. At 9 a.m. on April 24, 2001, the following described public land withdrawn by the Secretarial Order dated January 14, 1910, which established Power Site Reserve No.105, will be opened to disposal subject to the provisions of section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–532, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Sixth Principal Meridian
T. 7 S., R. 70 W., sec. 20, SW¼ SE¼.

The area described contains 40 acres in Jefferson County.

2. The State of Colorado has a preference right for public highway rights-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

Dated: December 22, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 01–1571 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MTM 88993]

Public Land Order No. 7480; Withdrawal of National Forest System Lands in the Rocky Mountain Front; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 405,000 acres of National Forest System lands from location and entry under the United States mining laws for a period of 20 years to preserve the traditional cultural uses by Native Americans, threatened and endangered species, and the outstanding scenic values and roadless character.

EFFECTIVE DATE: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: David Whittekiend, Lewis and Clark National Forest, 1101 15th Street North, Great Falls, Montana 59403–0869, 406–791–7700.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the National Forest System lands within the following described areas are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)) to preserve the outstanding values of the Rocky Mountain Front:

Principal Meridian, Montana

(PB identifies Protracted Blocks)

T. 16 N., R. 6 W.,
  Secs. 30 and 31.
T. 15 N., R. 7 W.,
  Secs. 2 and 6.
T. 16 N., R. 7 W., unsurveyed
T. 17 N., R. 7 W., partly unsurveyed
T. 16 N., R. 8 W., unsurveyed
  PB 37, PBs 43 to 47, inclusive, Secs. 12, 13, 14, 23, 26, 27, and 28, excluding wilderness;
  PB 48 and Secs. 24 and 25;
T. 17 N., R. 8 W., partly unsurveyed
  PBs 37 and 39, and Secs. 2, 11, 12, 13, and 25;
  PBs 38, 40, and 41, and Secs. 3, 10, 14, 15, 22, 35 and 36, excluding wilderness.
T. 18 N., R. 8 W., unsurveyed

PBs 37 to 50, inclusive, Secs. 7 to 10, inclusive, and Secs. 14, 15, 16, 23, 26 and 35;
Secs. 17, 18, 20, 21, 22, 27, and 34, excluding wilderness.
T. 18 N., R. 9 W.,
PB 37;
PB 38 and Secs. 3, 11, 12, and 13, excluding wilderness.
T. 19 N., R. 9 W.,
Secs. 25 and 36;
PBs 37 to 44, inclusive, Secs. 4 to 11, inclusive, Secs. 14, 15, 16, 22, 23, and 27, unsurveyed;
Secs. 17, 18, 20, 21, 28, 33, and 34, unsurveyed, excluding wilderness.
T. 20 N., R. 9 W., partly unsurveyed
T. 21 N., R. 9 W., partly unsurveyed
T. 22 N., R. 9 W., unsurveyed
PBs 37 to 52, inclusive, Secs. 2 to 5, inclusive, Secs. 8 to 11, inclusive, Secs. 14 to 18, inclusive, Secs. 20 to 23, inclusive, and Secs. 26 to 29, inclusive;
Secs. 6 and 7, excluding wilderness.
T. 23 N., R. 9 W., unsurveyed
PBs 37 to 42, inclusive, Secs. 2, 3, 10, 11, 14, 15, 21, 22, 23, 26, 27, 28, 33, 34, and 35;
Secs. 4, 5, 8, and 9, Secs. 16 to 20, inclusive, and Secs. 29 to 32, inclusive, excluding wilderness.
T. 24 N., R. 9 W., unsurveyed
PBs 37 to 42, inclusive, Secs. 2 to 11, inclusive, Secs. 14 to 17, inclusive, and Secs. 21, 22, 23, 26, 27, 34 and 35;
Secs. 18, 19, 20, 28, 29, 30, and 33, excluding wilderness.
T. 25 N., T. 9 W., unsurveyed
T. 26 N., R. 9 W., unsurveyed
PBs 37, 38, and 39, PBs 44 to 48, inclusive, Secs. 11, 14, 23, 26, 33, 34, and 35;
PBs 40 and 41, Secs. 10, 15, and 22, Secs. 27 to 32, inclusive, excluding wilderness.
T. 27 N., R. 9 W.,
Secs. 9, 16, 21, 22, 23, 26, 27, 34 and 35;
Secs. 28 and 33, excluding wilderness.
T. 19 N., R. 10 W.,
Secs. 1, 2, 12, and 13, excluding wilderness.
T. 20 N., R. 10 W., unsurveyed
Secs. 1 to 5, inclusive, Secs. 8 to 17, inclusive, Secs. 21 to 28, inclusive, and Sec. 36;
Secs. 6, 7, 18, 19, 20, and 29, Secs. 32 to 35, inclusive, excluding wilderness.
T. 21 N., R. 10 W., unsurveyed
PBs 37 and 38, Secs. 12 and 13, Secs. 24 to 28, inclusive, and Secs. 33 to 36, inclusive;
PB 39, Secs. 11, 14, and 15, Secs. 20 to 23, inclusive, and Secs. 29 to 32, inclusive, excluding wilderness.
T. 22 N., R. 10 W., partly unsurveyed
PBs 37, 38, 40, and 41, Secs. 1, 2, 11, 14, and 35, excluding wilderness;
PB 39 and Secs. 12, 13, 25, 26, and 36;
T. 24 N., R. 10 W., unsurveyed
Secs. 1, 12, and 13, excluding wilderness.
T. 25 N., R. 10 W., unsurveyed
Secs. 1, 2, 3, 11, 12, and 13;
Sec. 4, excluding wilderness and Flathead National Forest System lands;
Secs. 9, 10, 14, 15, 23, 24, 25, and 36, excluding wilderness.
T. 26 N., R. 10 W.,
Secs. 25 and 26, excluding wilderness;
Secs. 27, 28, and 33, excluding wilderness and Flathead National Forest System lands;
Secs. 34, 35, and 36.
T. 28 N., R. 10 W.,
PBs 38, 39, and 40, and Secs. 6, 7, and 18, unsurveyed;
PB 41, and Secs. 19 and 30, excluding wilderness, unsurveyed.
T. 29 N., R. 10 W.,
PBs 37, 38, and 39, and Secs. 30 and 31, unsurveyed.
T. 20 N., R. 11 W., unsurveyed
Secs. 12 and 13, excluding wilderness.
T. 27 N., R. 11 W., unsurveyed
Secs. 3, 4, and 5, excluding wilderness.
T. 28 N., R. 11 W.,
Secs. 1 to 24, inclusive, and Sec. 28;
Secs. 25, 26, and 27, and Secs. 29 to 34, inclusive, excluding wilderness.
T. 29 N., R. 11 W.,
PBs 37 to 44, inclusive, Secs. 5 to 9, inclusive, Secs. 15 to 23, inclusive, and Secs. 25 to 36, inclusive, unsurveyed.
T. 30 N., R. 11 W.,
PBs 37, 38, and 39, unsurveyed.
T. 28 N., R. 12 W., unsurveyed
Secs. 1 to 18, inclusive, and Secs. 22 to 26, inclusive;
Secs. 19, 20, 21, 27, 28, and 34, excluding wilderness and Flathead National Forest System lands;
Secs. 35 and 36, excluding wilderness.
T. 29 N., R. 12 W., unsurveyed
Secs. 1 to 30, inclusive, and Secs. 32 to 36, inclusive; Sec. 31, excluding Flathead National Forest System lands.
T. 30 N., R. 12 W.,
PBs 37 to 46, inclusive, Tract 47, PBs 48, 49, and 50, sec. 7, Secs. 17 to 21, inclusive, and Secs. 26 to 36, inclusive.
T. 31 N., R. 12 W.,
Sec. 31, excluding Blackfeet Indian Reservation.
T. 28 N., R. 13 W.,
Secs. 1 and 2, Secs. 11 to 14, inclusive, and Sec. 23, excluding Flathead National Forest System lands;
Sec. 24, excluding wilderness and Flathead National Forest System lands.
T. 29 N., R. 13 W.,
Secs. 1 to 4, inclusive, and Secs. 10 to 14, inclusive;
Secs. 5, 6, 8, 9, 15, and 16, Secs. 22 to 25, inclusive, and sec. 36, excluding Flathead National Forest System lands.
T. 30 N., R. 13 W., unsurveyed
PBs 37, 38, 40, and 40A, PBs 43 to 51, inclusive, PBs 54, 55, 56, and 59, PBs 61 to 66, inclusive, PB 68, Secs. 23 to 27, inclusive, and Secs. 32 to 36, inclusive, and all unpatented tracts;
PB 71, excluding Flathead National Forest System lands.
T. 31 N., R. 13 W.,
PBs 42, 46, 48, 49, and 50, unsurveyed.
The areas described contain approximately 405,000 acres in Lewis and Clark, Teton, Pondera, and Glacier Counties.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: January 16, 2001.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 01–1816 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–01–1220–AA]

Notice of Camping and Wood Cutting and Gathering Restrictions, Moab Field Office

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of camping and wood cutting and gathering restrictions—Moab Field Office, Utah.

SUMMARY: This notice, applicable to specified public lands administered by the BLM Moab Field Office, limits camping to developed campgrounds and designated sites, allows BLM to limit the size of designated camping areas, and requires the use of portable toilets at these designated sites where toilets are not provided. The notice also prohibits wood cutting and gathering, including Christmas tree cutting, for these intensively used areas and the Sand Flats Recreation Area. These actions are implemented on an interim basis to protect natural resources pending revision of the Resource Management Plan (RMP) for the area administered by the Moab Field Office.

DATES: This notice is effective January 22, 2001, and shall remain in effect until modified or the RMP is amended.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Resource Advisor, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532 or telephone 435–259–2100.

SUPPLEMENTARY INFORMATION: Frequent use of public lands near Moab, Utah for camping at undeveloped sites and associated wood cutting and gathering is damaging soils, vegetation, and scenic values at local destination areas and along popular trails and roads. The following actions are necessary to limit impacts to natural resource values and maintain the quality of recreation opportunities.

Camping Restrictions Along Highway and Road Corridors

Camping with vehicles on BLM administered public land within one-

half mile of the following highways and roads is limited to developed campgrounds and designated sites on a year-round basis to protect scenic values, reduce damage to soils and vegetation, and provide for public safety:

(1) Utah Highway 313;

(2) The Island in the Sky entrance road between Utah Highway 313 and Canyonlands National Park;

(3) The Gemini Bridges route (primarily Grand Co. No. 118) and the spur route from it into ''The Bride Canyon;''

(4) The Kane Creek Canyon Rim route from U.S. Highway 191 to where it crosses the eastern boundary of section 20, T. 27 S., R. 22 E. exclusive of the state and private land west of Blue Hill; and

(5) Lands within Long Canyon north of the Colorado Riverway Recreation Area and south of the State land at the head of the canyon within one-half mile of the Long Canyon Road (Grand Co. No. 135).

Other Camping Restrictions

Camping with vehicles on BLM administered public lands is also limited for the above reasons to developed campgrounds and designated sites on a year-round basis in the following areas:

(1) The lands along both sides of U.S. 191 bounded by Arches National Park on the east, private lands in Moab Valley on the south, the Potash Rail Spur on the west, and private and State land near the lower Gemini Bridges Trailhead on the north;

(2) Lands located between the road to Nefertiti Rapid (Grand Co. No. 154) and the shoreline of the Green River along the east side of the river from the public land boundary near Swaseys Take-out upstream to the upper end of the Nefertiti Rapid parking area;

(3) Lands including the Pace Hill, Castle Rock, Ida Gulch, Professor Valley, Mary Jane Canyon, and the upper Onion Creek areas that are south of the Colorado Riverway Recreation Area as established in 1992, below the rims of Adobe and Fisher Mesas, and west of the private land in Fisher Valley;

(4) Lands along the Potash Trail (Grand Co. No. 134, the road between the western end of Utah Highway 279 and Canyonlands National Park) that are east of Canyonlands National Park; south of Dead Horse Point State Park, and other state and private lands, north of the Colorado River, and west of the Colorado Riverway Recreation Area as established in 1992, excluding riverside campsites accessible by water craft from the Colorado River; and

(5) Lands within the Mill Creek Canyon Planning Area.

Backpack type camping within the Mill Creek Planning Area is allowed at sites one-quarter mile or farther from designated roads and greater than 100 feet from Mill Creek and from archaeological sites. All camping continues to be prohibited in the Powerdam and Flat Pass areas under a previously published notice.

For all of the above locations, at developed campgrounds and designated sites where camping is authorized, camping and vehicle travel may be limited to posted site boundaries and parking areas.

Possession and use of portable toilets for solid human body waste is required for overnight use at all designated campsites in the areas described above, except at sites where constructed toilets are provided. Disposal of portable toilet waste off public land is required.

Wood Cutting and Gathering Restrictions

Wood cutting and gathering, including Christmas tree cutting, on BLM administered public land, within all of the areas described above under Camping Restrictions, is prohibited at all times to protect scenic values and vegetation. In addition, wood cutting and gathering, including Christmas tree cutting, is prohibited within the Sand Flats Recreation Area.

Exceptions

Camping and wood cutting and gathering restrictions do not apply to activities permitted by the BLM (including traditional and historic uses by Native Americans); BLM official uses; or military, fire, emergency, or law enforcement actions.

Implementation

Maps showing these and all current Moab Field Office camping and wood cutting and gathering restrictions are available for public review at the Moab Field Office. These restrictions are also shown on a map on the Moab Field Office's website at *http://www.blm.gov/utah/moab.* BLM will provide public land users with information about these camping and wood cutting and gathering restrictions using brochures, signs, and bulletin boards with maps at major entry areas. Enforcement actions will be taken as necessary.

Authority: Pub. L. 94–579, 43 CFR 8364.1.

Dated: January 12, 2001.

Sally Wisely,

State Director.

[FR Doc. 01–1594 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–DQ–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–01–1220–AA]

Notice of Travel Restrictions

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of Travel Restrictions, Moab Field Office, Utah.

SUMMARY: This notice places restrictions on travel by off-road vehicles (ORV's) and mountain bikes on specific public land administered by the BLM Moab Field Office. These actions are necessary to halt ongoing impacts and prevent future degradation of resource values. They are being implemented on an interim basis to protect resource values and public safety, pending revision of the Resource Management Plan (RMP) for the area administered by the BLM Moab Field Office. This notice also affirms and describes previous travel restrictions that remain in effect.

DATES: This notice is effective January 22, 2001, and shall remain in effect until modified or the RMP is amended.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Resource Advisor, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532 or telephone 435–259–2100.

SUPPLEMENTARY INFORMATION: In 1985, the Grand Resource Area RMP left the majority of the public land currently administered by the Moab Field Office as ''Open to Off-road Vehicle Use.'' Since publication of the plan, specific public land areas administered by the Moab Field Office have become destinations for travel by off-road vehicles users and mountain bikers. Cross-country travel off established roads and trails by motorized vehicles and mountain bikes is causing damage to scenic, cultural, soil, vegetation, and wildlife habitat resources in the high use areas identified below and, in some cases, is causing or threatens to cause considerable adverse effects to those resource values. Short-cutting, making parallel routes, detouring around challenging segments, and widening routes threaten the integrity of existing routes, reduce their value for commercial recreation and special events, and make them less attractive for recreation use. The proliferation of multiple routes off long established roads and trails also contributes to confusion among users as to their location on the ground and has led to more frequent search and rescue activity.

On several historic, interpretive, or recreational single-track trails, certain

uses are incompatible with the protection of significant resource values or involve safety or management concerns. Specific actions are necessary to manage these routes.

New Travel Restrictions, Moab Travel Management Area (MTMA)

Travel by ORV's and mountain bikes, on public land in five areas administered by the Moab Field Office, is now limited to existing roads and trails, except where more restrictive designations apply as described below under Existing Designations. Cross-country travel in these five areas, collectively referred to as the Moab Travel Management Area (MTMA), is prohibited, except for travel by mountain bike and two-wheel motorcycle on established slickrock riding areas (Bartlett Wash slickrock area, Tusher Canyon slickrock area, and slickrock areas along the Monitor and Merrimac and Lower Monitor and Merrimac trails), where such use does not further disturb vegetation or soils. To protect public safety and enhance user experience, BLM will provide maps of, and sign and mark recommended routes.

Under this action, approximately 245,642 acres currently designated as Open to ORV travel will be managed as ORV and mountain bike Travel Limited to Existing Roads and Trails. This change involves 25 percent of the land currently Open to ORV use and 13 percent of the total public land within the Moab Field Office. The intent of these year-round ORV designation changes is to protect natural resource and scenic values from the adverse effects of cross-country travel, maintain the integrity of established travel routes, and provide for public safety until the RMP is revised.

MTMA 1 (approximately 15,031 acres, in 3 parcels) is northwest of Moab along the boundary of Arches National Park. It includes all public land south of Township 22 S, west of Arches National Park, east of U.S. Highway 191 and north of the private land at the mouth of Moab Canyon.

MTMA 2 (approximately 189,939 acres) is northwest of Moab. It includes all public land west of U.S. Highway 191; south of the Canyonlands Field Airport, the Mancos shale land already limited to existing roads and trails, the Levi Well Road, and the Tenmile Point Road; east of the public land already limited to existing roads and trails along the east side of the Green River rims, and north of the northern boundary of Canyonlands National Park, the block of State and Private land around Dead Horse Point State Park and Potash, and the land north of Utah Highway 279. Land inside this boundary (in South Sevenmile Canyon and the Colorado Riverway), where ORV travel is already limited to designated roads and trails remains so designated.

MTMA 3 (approximately 28,266 acres) is west and south of Moab. It includes all public land west of U.S. Highway 191; north of the southern rim of Kane Creek Canyon and the land on Hatch Point already designated as limited to existing roads; and east and south of the Colorado River. Land in the Behind the Rocks Wilderness Study Area (WSA), which is closed to ORV use (subject to valid existing rights), and within the Colorado Riverway, where ORV use is limited to designated roads and trails, remains so designated.

MTMA 4 (approximately 6,558 acres) is northeast of Moab along the Entrada Bluffs Road. It includes an area bounded on the south by a one-half mile wide corridor along County Road 105 (Entrada Bluffs Road) and on the north by land already limited to existing roads and trails along the Dolores River.

MTMA 5 (approximately 5,848 acres) is northeast of Moab along the Utah/Colorado border. The area, which includes May Flat, is approximately 8 miles long and 2 miles wide. It is bordered by areas where ORV travel is currently limited to existing roads and trails on the north and west; private land to the southwest; the Colorado River on the south, and the Colorado-Utah state line near Rabbit Valley on the east.

Interpretive Trails Closed to Motorized and Mountain Bike Travel

The Sauropod Dinosaur Trackway Interpretive Trail, and the Mill Canyon Dinosaur Interpretive Trail are closed to motorized travel and mountain bike use to prevent resource damage to paleontological resources, scenic values, vegetation, and soils.

Single-Track Trails Closed to Motorized Travel

The following single-track trails are closed to motorized travel to prevent further damage to scenic values, soils, and vegetation along these narrow trails and to provide for public safety: (1) The entire Portal Trail from Jaycee Park to the top of Poison Spider Mesa; (2) the Hunter Canyon Rim Trail from the drill hole at the end of the Hunter Canyon Rim ORV route to the Kane Creek Road; (3) the Hidden Valley Trail from its trailhead in Spanish Valley to the boundary of the Behind the Rocks WSA.

Implementation

Maps showing all current Moab Field Office ORV designations are available for public review at the Moab Field Office. The designations are also shown on a map on the Moab Field Office's website at *http://www.blm.gov/utah/moab.* BLM will provide public land users with information about travel restrictions using brochures, signs, and bulletin boards with maps at major entry areas. It will protect key areas from further cross-country travel using signs and simple barriers as appropriate. Enforcement actions will be taken as necessary. BLM will provide maps of, and mark and sign recommended routes.

Future Planning

These travel restrictions are an interim measure to protect resource values and route integrity by prohibiting cross-country use and use on the specific single-track trails identified above until the RMP is revised. Revision of the RMP will address long term travel management across a range of management options.

Existing Designations

Except for those formerly Open areas where travel is now Limited to Existing Roads and Trails, this notice does not change the ORV designations made through the RMP or previously published **Federal Register** travel notices covering the public land administered by the Moab Field Office. These designations are affirmed and described below. The travel designation map on the Moab Field Office website shows all applicable travel designations.

Closed Areas

The Behind the Rocks Wilderness Study Area, Negro Bill Canyon, and the east side of Westwater Canyon are closed to ORV use subject to valid existing rights. The Windwhistle and Hatch Point Campgrounds, the Canyonlands, Needles, and Anticline Overlooks, and the Onion Creek sensitive plant site are closed to ORV use off developed roads. The Black Ridge Wilderness Area is also closed to ORV and mechanized travel by act of Congress through the Colorado Canyons National Conservation Area and Black Ridge Canyons Wilderness Act of 2000.

Limited to Designated Roads and Trails Areas

ORV Travel in the Mill Creek and East Mill Creek areas and the Colorado Riverway is limited to designated routes. ORV and mountain bike travel in the Sand Flats Recreation Area, the Kens Lake area, the Sevenmile Canyon

area, and the NW ¼ of Section 24 and the SW ¼ of Section 13, T. 25 S., R. 20 E. S.L.M. in the Little Canyon area is limited to designated routes.

Limited to Existing Roads and Trails Areas

The 1985 RMP designated the Mancos shale areas in the Cisco and Green River desert areas; the Colorado, Green, and Dolores river corridors; portions of the Canyon Rims Recreation Area, and the area between Dead Horse Point State Park and the Colorado River as limited to existing roads and trails.

Exceptions

The travel restrictions in this notice do not apply to wheelchairs, water craft, military, fire, emergency, or law enforcement vehicles used for emergency purposes, vehicles expressly permitted by the BLM, or BLM vehicles required for official use, and are subject to valid existing rights.

Authority: Pub. L. 94–579, E. O. 11644, E. O. 11989, 43 CFR 8341.2, 43 CFR 8364.1

Dated: January 12, 2001.

Sally Wisely,

State Director.

[FR Doc. 01–1595 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–DQ–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–6320–AA; HAG01–0071]

Prohibition of Certain Activities on the Medford District in and Around the Woodrat Mountain hang Gliding Site, Jackson County, Oregon

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Prohibition on Certain Activities on Public Lands in Jackson County, Oregon.

SUMMARY: Hang gliding is temporarily prohibited on the Medford District, Jackson County, Oregon, from January 4, 2001 to November 1, 2001, during periods of helicopter logging, or upon cancellation of this notice. This prohibition is being made in the interest of public safety while the Poor Bishop timber sale is taking place in the Woodrat Mountain area.

The following public lands are affected: T. 38 S., R. 3 W, Sections 23, 25, 26; *Williamette Meridian, Jackson County, Oregon.*

FOR FURTHER INFORMATION CONTACT: Steven Armitage, Forest Manager, at (541) 618–2333.

Authority: 43 CFR 8364.

Penalty: Any person failing to comply with this prohibition may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: January 4, 2001.

Rich Drehobl,

Field Office manager, Ashland Field Office.

[FR Doc. 01–1729 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–6320–NW; HAG01–0063]

Notice of Temporary Restriction on Public Lands; Jackson, County, Oregon

AGENCY: Bureau of Land Management, Medford District, Ashland Field Office, Oregon.

ACTION: A temporary restriction of the use of paint ball equipment on public lands administered by the Bureau of Land Management (BLM), Ashland Field Office, Medford District, Oregon.

SUMMARY: The BLM is temporarily restricting the use of paint ball equipment on certain public lands in Jackson County.

DATES: This restriction will take effect upon the published date of this notice. The closure will continue until rescinded by BLM, to allow time for natural restoration to be completed.

FOR FURTHER INFORMATION CONTACT: Field Office Manager, Ashland Field Office, Medford District, 3040 Biddle Road, Medford, Oregon 97504, telephone (541) 618–2310.

Discussion of the Rules: The public lands affected by this closure are all lands administered by the BLM in NE¼SW¼, section 23 of Township 37 South, Range 1 East, Willamette Meridian, Jackson County, Oregon. This area is located on the west side of Antelope Creek, within the riparian reserve zone. Antelope Creek is an anadromous fish stream and is managed in accordance with the Aquatic Conservation Strategy of the Northwest Forest Plan. This area has been used for unregulated paint ball activity, unauthorized cutting of vegetation, trampling of riparian vegetation and crossing of the stream by off-road vehicles. This use is causing soil erosion into streams, loss of vegetation and disturbance to anadromous fish populations. In addition, vehicles are being used for transporting household and commercial trash that is being illegally dumped, causing further degradation of the soil and water conditions. In order to protect the natural resources, and follow the guidance of the Northwest Forest Plan, paint ball and off-road activity must stop.

Closure and restriction signs will be posted at main entry points. Maps of the closure area may be obtained from the Medford District Office.

Prohibited Act: Under 43 CFR 8364.1, the Bureau of Land Management will enforce the following rule within the Antelope Creek closure and restriction area:

a. You must not use paint ball equipment.

b. You must not engage in paint ball activity.

c. You must not drive off established roads.

Exemptions: Persons who are exempt from these rules include any federal, state or local officer or employee in the scope of their duties, members of any organized rescue or fire-fighting force in performance of an official duty, and any person authorized in writing by the Bureau of Land Management.

Penalties: The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7. Any person who violates this closure may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: January 2, 2001.

Rich Drehobl,

Field Office Manager, Ashland Field Office.

[FR Doc. 01–1728 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–092–1610–00]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Glasgow Field Station, announces the availability of a proposed Resource Management Plan (RMP) Amendment and Environmental Assessment (EA). The proposed plan amendment/EA addresses two potential ACECs in the Glasgow Field Station,

Valley County, Montana. The proposed plan is to designate a Bitter Creek Area of Critical Environmental Concern (ACEC) and a Mountain Plover ACEC.

DATES: The proposed plan amendment may be protested. The 30-day protest period will commence with the date of publication of this notice. Protests must be submitted on or before February 21, 2001.

ADDRESSES: Written protests must be sent to: Director, Bureau of Land Management, Attention: Ms Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240. The overnight mail address is: Director, Bureau of Land Management, Attention: Ms Brenda Williams, Protests Coordinator (WO–210), 1620 L Street, NW., Rm. 1075, Washington, DC 20036 [Phone: 202/452–5510].

FOR FURTHER INFORMATION CONTACT: John Fahlgren, Assistant Field Manager, BLM, Glasgow Field Station, RR1–4775, Glasgow, MT 59230. 406–228–3750.

SUPPLEMENTARY INFORMATION: This proposed plan amendment/EA addresses special management for two ACECs; Bitter Creek and Mountain Plover. The public land being considered is located in Valley County, Montana. This plan would amend the Judith-Valley-Phillips RMP. The Bitter Creek Wilderness Study Area (WSA) (59,660 acres) was found to meet the criteria as a potential ACEC due to the scenic diversity and variety of vegetation types and wildlife habitat. The proposed plan is to designate a Bitter Creek ACEC. If Congress released Bitter Creek from WSA status, a plan for management of the ACEC would be initiated within two years. Until an ACEC management plan is completed for Bitter Creek, management would be the same as the revised edition of the Interim Management Policy for Lands Under Wilderness Review (1998). The Mountain Plover area (24,730 acres) provides natural habitat for the mountain plover, a prairie bird. It is an area of native plover habitat which is not associated with black-tailed prairie dogs. The proposed plan is to designate a Mountain Plover ACEC. Management prescriptions limiting surface disturbing activities would apply within the ACEC to protect the mountain plover during the nesting period from April 1 to July 31. These management prescriptions include a seasonal restriction on oil and gas activities, mitigating measures considered in Plan of Operations, seasonal stipulation on right-of-way grants, and off-highway vehicle travel seasonally limited to designated roads and trails.

The BLM's resource management planning process includes an opportunity for administrative review via a plan protest to the BLM's Director. Any person who participated in the planning process and has an interest which is or may be adversely affected by the approval of an amendment to an RMP may protest such approval. Careful adherence to the following guidelines will assist in preparing a protest that will assure the greatest consideration to your point of view. Only those persons or organizations who participated in the planning process may protest. A protesting party may raise only those issues which were commented on during the planning process. New issues may be raised at any time but should be directed to the appropriate BLM field office for consideration in plan implementation, as potential plan amendments, or as otherwise appropriate. The protest period extends for 30 days. There is no provision for any extension of time. To be considered ''timely,'' your protest must be postmarked no later than the last day of the protest period. Also, although not a requirement, we suggest that you send your protest by certified mail, return receipt requested. In order to be considered complete, your protest must contain, at a minimum, the following information:

(1) The name, mailing address, telephone number and interest of the person filing the protest.

(2) A statement of the issue or issues being protested.

(3) A statement of the part or parts of the amendment being protested. To the extent possible, this should be done by reference to specific pages, paragraphs, sections, tables, maps, etc. included in the proposed amendment.

(4) A copy of all documents addressing the issue or issues submitted during the planning process by the protesting party or an indication of the discussion date of the issue(s) for the record.

(5) A concise statement explaining why the proposed decision is believed to be incorrect. This is a critical part of your protest. Take care to document all relevant facts. As much as possible, reference or cite the planning documents, environmental analysis documents, available planning records (*i.e.,* meeting minutes or summaries, correspondence, etc.). A protest which merely expresses disagreement with the proposed decision, without any data will not provide us with the benefit of your information and insight. In this case, the Director's review will be based on the existing analysis and supporting data.

At the end of the 30-day protest period, the BLM may issue a Decision Record, approving implementation of any portions of the proposed plan amendment not under protest. Approval will be withheld on any portion of the plan under protest until the protest has been resolved.

(**Authority:** Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712))

Dated: January 8, 2001.

John Fahlgren,

Assistant Field Manager, Bureau of Land Management.

[FR Doc. 01–1624 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP01–0069]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 22 S., R. 8 W., accepted November 3, 2000
T. 19 S., R. 1 W., accepted November 13, 2000
T. 29 S., R. 10 W., accepted November 22, 2000
T. 31 S., R. 5 W., accepted December 18, 2000

Washington

T. 23 N., R. 10 W., accepted November 6, 2000

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 SW. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management,

Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 SW. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: January 3, 2001.

Robert D. DeViney, Jr.,

Branch of Realty and Record Services.

[FR Doc. 01–1572 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 103446]

Public Land Order No. 7479; Withdrawal of National Forest System Land for Guadalupe Cave Resource Protection Area; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 27,299.50 acres of National Forest System land from mining and mineral leasing, for 20 years to protect the Guadalupe Cave Resource Protection Area.

EFFECTIVE DATE: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Jeanette Espinosa, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), and from leasing under the mineral leasing laws (30 U.S.C. 181 *et seq.* and 30 U.S.C. 351 *et seq.* (1994)), to protect the Guadalupe Cave Resource Protection Area.:

New Mexico Principal Meridian

Lincoln National Forest

T. 25 S., R. 21 E.,
Sec. 36, lot 4, S½SW¼, and SW¼SE¼.
T. 26 S., R. 21 E.,
Sec. 1;
Sec. 2, E½;
Sec. 10, SE¼SE¼;
Sec. 11, E½ and SW¼;
Secs. 12, 13, and 14;
Sec. 15, E½, S½ NW¼, and SW¼;
Sec. 16, S½SE¼;
Sec. 20, SE¼;
Secs. 21 to 28, inclusive;
Sec. 29, E½;
Sec. 32, lots 1 and 2, and N½ NE¼;
Sec. 33, lots 1 to 4, inclusive, and N½N½;
Sec. 34, lots 1 to 4, inclusive, and N½N½;
Sec. 35, lots 1 to 4 inclusive, and N½N½;
Sec. 36, lots 1 to 4, inclusive, and N½N½.
T. 25 S., R. 22 E.,
Sec. 13, S½;
Sec. 14, S½;
Sec. 15, S½ and NW¼;
Sec. 16, S½ and NE¼;
Sec. 20, SE¼SW¼ and SE¼; secs. 21 to 29, inclusive;
Sec. 31, E½, E½W½, and SW¼SW¼;
Sec. 32, 33, and 34.
T. 26 S., R. 22 E., secs. 3, 4, and 5;
Sec. 6, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½; secs. 8, 9, 10, 15, 16, and 17;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½.

The area described contains approximately 27,299.50 acres in Eddy County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: January 16, 2001.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 01–1817 Filed 1–19–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; OR–56288]

Notice of Proposed Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of Interior proposes to withdraw approximately 151,970 acres of Federal lands, to protect the nationally significant ecological and biological values of the Siskiyou Wild Rivers area. Subject to valid existing rights, this notice segregates the Federal lands described below for up to 2 years from location and entry under the mining laws. The lands have been and will remain open to the public land laws and mineral leasing laws unless closed by other segregations of record.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, Oregon State Office, Bureau of Land Management, 503–952–6155.

ADDRESSES: State Director, Oregon State Office, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208–2965.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to protect the nationally significant ecological and biological diversity of the Siskiyou Wild Rivers area while it is determined whether special management designation for the area is warranted and to assess the views of the public on such a designation. The Siskiyou Wild Rivers area also contains outstanding scenic and recreation values and special status plant and animal species and their habitats. The proposal, if finalized, would withdraw, subject to valid existing rights, the following described Federal lands and, if acquired by the United States, any non-Federal lands within the area, from location and entry under the mining laws. The Federal lands have been and will remain open to the public land laws and the mineral leasing laws, subject to other segregations of record:

1. The Federal lands proposed for withdrawal are described as:

Williamette Meridian

T. 37 S., R. 6 W.,
sec. 31, W½.
T. 38 S., R. 6 W.,
sec. 30, S½;
sec. 31.
T. 39 S., R. 6 W.,
sec. 5, E½;
secs. 6 and 8.
T. 33 S., R. 7 W.,
secs. 18, 19, 30, and 31.
T. 34 S., R. 7 W.,
secs. 6, 7, 18, 19, 30, and 31.
T. 35 S., R. 7 W.,
secs. 3 to 10, inclusive, and secs. 15, 17, 18 and 19;
sec. 20, W½.
T. 39 S., R. 7 W.,
sec. 1, E½;
sec. 2.
T. 32 S., R. 8 W.,
sec. 31.
T. 33 S., R. 8 W.,
secs. 5 to 36, inclusive.
Tps. 34 and 35 S., R. 8 W., inclusive.
T. 38 S., R. 8 W.,
secs. 9, 15, 21, and 28.
T. 39 S., R. 8 W.,
sec. 31.
T. 40 S., R. 8 W.,
secs. 7, 10, 15, and secs. 17 to 20 inclusive;

sec. 22, N½;
sec. 33, S½ NE¼ and S½;
sec. 34.
T. 32 S., R. 9 W.,
sec. 8, S½;
secs. 3 to 35, inclusive.
Tps. 33, 34, and 35 S., R. 9 W., inclusive.
T. 41 S., R. 9 W.,
sec. 9.
Tps. 32, 33 and 34 S., R. 10 W., inclusive.
T. 32 S., R. 11 W., inclusive.

The areas described aggregate approximately 151,970 acres, more or less, in Curry, Coos, Josephine, and Douglas Counties.

2. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

3. Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard with respect to the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set fourth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during the segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining law.

Dated: January 16, 2001.

Ray Brady,

Manager, Lands and Realty Group.

[FR Doc. 01–1703 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; OR–56289]

Notice of Proposed Withdrawal; Oregon and California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, filed an application to withdraw approximately 1,093,953 acres of National Forest System lands from location and entry under the mining laws to protect the nationally significant ecologic and biologic diversity of the Siskiyou Wild Rivers area which also contain outstanding scenic and recreation values, and special status plant and animal species and their habitats. The lands remain open to such uses as may be made of National Forest System lands.

DATES: Written comments should be received on or before April 23, 2001.

ADDRESSES: Written comments should be sent to the Office of the Chief, Forest Service, U.S. Department of Agriculture, 201 14th Street, SW. at Independence Ave., SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: The purpose of the proposed withdrawal is to protect the nationally significant ecologic and biologic diversity of the Siskiyou Wild Rivers area which also contain outstanding scenic and recreation values, and special status plant and animal species and their habitats while it is determined whether special management designation for the area is warranted and to assess the views of the public on such a designation. The proposal, if finalized, would withdraw the following described National Forest System lands from location and entry under the mining laws. The lands will remain open to such uses as may be made of National Forest System lands subject to valid existing rights:

1. The National Forest System lands proposed for withdrawal are described as:

Willamette Meridian

T. 31 S., R.'s 10 and 11 W.;
T. 32 S., R.'s 10 to 14 W., inclusive;
T. 33 S., R.'s 10 to 14 W., inclusive;
T. 34 S., R.'s 9 to 13 W., inclusive;
T. 35 S., R.'s 8 to 13 W., inclusive;
T. 36 S., R.'s 7 to 13 W., inclusive;
T. 37 S., R.'s 8 to 13 W., inclusive;
T. 38 S., R.'s 8 to 13 W., inclusive;
T. 39 S., R.'s 5, 6, 9, 10, 11, and 12 W., inclusive;
T. 40 S., R's 5, 6, 7, 9, 10, 11, and 12 W., inclusive;
T. 41 S., R.'s 5 to 12 W., inclusive.

Humbolt Meridian, California

T. 47 N., R.'s 3 to 6 E., inclusive;
T. 48 N., R.'s 4 to 6 E., inclusive.

The area described contains 1,093,953 acres in Oregon and California.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Chief of the Forest at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard with respect to the proposed withdrawal must submit a written request to the Forest Chief at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set fourth in 43 CFR 2300. For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during the segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining law.

Dated: January 12, 2001.

Nina Rose Hatfield,

Acting Director, Bureau of Land Management.

[FR Doc. 01–1697 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Notice of Availability of a Final General Management Plan Amendment/ Environmental Impact Statement for Dry Tortugas National Park, Monroe County, FL

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Final General Management Plan Amendment/ Environmental Impact Statement for Dry Tortugas National Park, Monroe County, Florida.

SUMMARY: The National Park Service has prepared a Final General Management Plan Amendment/Environmental Impact Statement (GMPA/EIS) that evaluates long-term management alternatives for Dry Tortugas National Park. Consistent with the park's purpose, significance, and mission goals, five alternatives were evaluated for guiding the management of the park over the next 15 to 20 years. The alternatives incorporate various zoning applications and other management provisions to ensure resource protection and quality visitor experience conditions. The environmental consequences anticipated from implementation of the various alternatives are addressed in the document. Impact topics include natural and cultural resources, visitor experience, socioeconomic environment, and park operations/facilities.

DATES: The document will be available for review for 30 days from the publication of a notice by the Environmental Protection Agency in the **Federal Register**. After the 30-day review period, a Record of Decision will be signed that will document NPS approval of the final Dry Tortugas GMPA/EIS, and identify the selected alternative for implementation.

ADDRESSES: The final Dry Tortugas GMPA/EIS will be mailed to agencies, organizations, and individuals on the park's mailing list. Public reading copies of the document will also be available for review at the following locations:

- Everglades National Park—Headquarters, 40001 State Road 9336, Homestead, FL
- Offices of the Florida Keys National Marine Sanctuary: 216 Ann Street, Key West, FL, 5550 Overseas Highway, Marathon, FL, 95200 Overseas Highway, Key Largo, FL
- Miami-Dade Public Library Branches: 700 N. Homestead Blvd., Homestead, FL, 101 West Flagler St., Miami, FL, 10750 SW 211th St., Miami, FL
- Monroe County Public Library Branches: 700 Fleming St., Key West, FL, 3251 Overseas Highway, Marathon, FL, Mile Marker 81.5, Islamorada, FL, Mile Marker 100, Key Largo, FL
- Collier County Public Library, 650 Central Avenue, Naples, FL
- St. Petersburg Public Library, 3745 9th Ave. North, St. Petersburg, FL

In addition, the document will be posted on the Dry Tortugas National Park Webpage (*www.nps.gov/drto/planning*). A limited number of printed copies will be available from the Superintendent on request.

FOR FURTHER INFORMATION CONTACT: Maureen Finnerty, Superintendent, Everglades and Dry Tortugas National Parks, 40001 State Road 9336, Homestead, FL 33034–6733.

SUPPLEMENTARY INFORMATION: The following management alternatives were evaluated in the GMPA/EIS:

Alternative A—As the no-action alternative, this alternative represents a continuation of current management policies and operations. The park would attempt to accommodate increasing visitor use while protecting resources to the extent allowable under current policy and legal requirements.

Alternative B—Under this alternative, visitors would be free to travel throughout much of the park and have a variety of recreational experiences. However, the park would more closely manage the types and levels of acceptable visitor use to provide greater protection of park resources and to ensure quality visitor experiences. Greater emphasis would be placed on measures to monitor resource conditions and to implement appropriate protection/remedial actions as necessary.

Alternative C (proposed action)—In addition to the provisions of Alternative B, this alternative calls for the application of a research natural area zone (covering about one half of the park) in which no fishing would be allowed, the implementation of a visitor permitting system, and increased reliance on commercial service providers to direct and structure visitor use. These measures would be anticipated to further enhance resource protection and visitor experience objectives.

Alternative D—Provisions of this alternative are similar to those of Alternative C, with the further restrictions that only commercial tour operators providing public tours would be allowed in the research natural area zone. Private boaters would be required to obtain a permit to boat or engage in other park-allowed activities outside of the research natural area zone. As under Alternative C, the research natural area zone would cover approximately half of the park, although its spatial configuration would be different. Visitor experiences would be highly structured, but diverse opportunities for recreational activities would remain available.

Alternative E—This alternative places primary emphasis on resource protection and conservation with the majority of the park zoned a research natural area. Visitation would be strictly managed throughout most of the park to reduce or avoid impacts on the fragile resource base.

Planning for the Dry Tortugas GMPA/EIS was coordinated with concurrent planning for the Florida Keys National Marine Sanctuary, administered by the National Oceanic and Atmospheric Administration. The latter plan proposes a no-take ecological reserve within the remote westernmost portion of the marine sanctuary.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. If you wish for 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.

Dated: January 9, 2001.

W. Thomas Brown,

Regional Director, Southeast Regional Office, National Park Service.

[FR Doc. 01–1576 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Record of Decision for Final Environmental Impact Statement and Bison Management Plan for the State of Montana and Yellowstone National Park

The U.S. Department of the Interior's National Park Service and the U.S. Department of Agriculture's Animal and Plant Health Inspection Service and Forest Service have signed a Record of Decision (December 20, 2000) on a Joint Management Plan for bison in Yellowstone National Park and Montana.

The Plan is designed to preserve the largest wild, free-ranging population of bison in the United States while minimizing the risk of brucellosis disease transmission (between bison and cattle) to protect the economic interest and viability of the livestock industry in the State of Montana.

While the Joint Management Plan is not intended to be a brucellosis eradication plan, it employs many tools to manage and reduce the potential risk of brucellosis transmission from bison to cattle. Limited numbers of bison will

be allowed on public lands outside the park during winter when cattle are not present. Bison will not be allowed to intermingle with cattle and will be hazed back into the park when the weather typically moderates in the spring (mid-April on the north side and mid-May on the west side). The agencies will capture or remove bison still remaining outside the park that cannot be hazed. Any possible risk to cattle will be further minimized before cattle are allowed to return to public lands by waiting a sufficient amount of time to ensure that the bacteria which causes the disease is no longer alive outside the park.

The agencies will further manage the risk of transmission of brucellosis to cattle by limiting the number of bison outside the park in the north (Reese Creek) and west (West Yellowstone) management areas through intensive monitoring and hazing, and when necessary, capture, test, and slaughter of seropositive bison. Management activity will be increased as bison move toward the edges of management zones outside the park. The plan also provides that the agencies will maintain a spring bison population of up to 3,000 animals. The agencies also agree to increase implementation of non-lethal management measures should severe winter conditions result in a large management removal or natural winter die off.

In an effort to further reduce the risk of transmission and protect cattle, the agencies will require vaccination if 100% of all vaccination-eligible cattle in north and west management zones are not vaccinated within one year. APHIS will pay for all direct vaccination costs. Allowing untested bison outside the park in the north and west boundary management zones will begin after the agencies have had experience with seronegative bison in certain areas outside the park during winter and when the National Park Service initiates vaccination of bison with a safe and effective vaccine utilizing a safe remote delivery system inside the park.

With the implementation of this plan, the federal agencies and the State of Montana recognize that bison are an essential component of the greater Yellowstone ecosystem and that the cooperation of several agencies is needed to fully manage the herd to reduce the risk of transmission of brucellosis from bison to cattle and maintain a wild, free-ranging population of Yellowstone bison.

The Joint Management Plan, included in the Record of Decision, is a slightly altered version of the existing plan presented in the federal agencies' final Environmental Impact Statement (FEIS). The State of Montana incorporated and adopted the federal agencies' FEIS into its own FEIS for bison management and has recently signed their Record of Decision, which implements the same Joint Management Plan as the federal agencies.

A copy of the Record of Decision on Bison Management for Yellowstone National Park and the State of Montana can be obtained via the internet by visiting the National Park Service web site at *http://www.nps.gov/planning* or by calling (307) 344–2159.

Jack Neckels,

Acting Director, Intermountain Region.

[FR Doc. 01–1574 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park Bar, Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, February 5, 2001.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1:00 PM to consider the following agenda:

1. Review and approval of minutes from the meeting held September 11, 2000.
2. Committee reports
   Land Conservation
   Park Use
   Science
   Nomination
3. Old business
4. Chairman's report
5. Superintendent's report
6. Public comments
7. Proposed agenda for next Commission meeting on Monday, June 4, 2001.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: January 9, 2001.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 01–1575 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that the National Park System Advisory Board will meet January 24–26, 2001, in the Board Room of the American Geophysical Union Building, 2000 Florida Avenue, NW., Washington, DC.

The Board will convene from 9:00 a.m., until 5:00 p.m., on January 24 and 25. On January 26, the Board will convene at 9:00 a.m., and adjourn at 12:00 noon. The Board will consider procedural matters relative to completing its study of the future of the National Park Service and the National Park System. During the morning session on January 24, the Board will be addressed by leaders of national organizations having interest in National Park Service matters.

The Board may be addressed at various times by officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW., Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: January 11, 2001.

Denis P. Galvin,

Acting Director, National Park Service.

[FR Doc. 01–1658 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–70–U

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 January 13, 2001. Pursuant to section 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 February 6, 2001.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Van Buren County
Patterson, Walter, Filling Station, (Arkansas Highway History and Architecture MPS) AR 65, bet. Griggs and Court Sts., Clinton, 01000074

CALIFORNIA

Los Angeles County
Nuetra Office Building, 2379 Glendale Building, Los Angeles, 01000075

Orange County
Fullerton First Methodist Episcopal Church, 117 N. Pomona Ave., Fullerton, 01000076

Sacramento County
Galarneaux, Mary Haley, House, 922–924 T. St., Sacramento, 01000077

FLORIDA

Palm Beach County
College Park Historic District, Roughly bounded by Maryland Dr., N. Federal Hwy., 19th Ave. N., and N. Dixie Hwy., Lake Worth, 01000078

GEORGIA

Fulton County
Westinghouse Electric Company Building, 426 Marietta St., NW, Atlanta, 01000080

Habersham County
Loudermilk Boarding House, 271 Foreacre St., Cornelia, 01000079

ILLINOIS

Clay County
Meyer, Pearl and Bess, House, 233 E. 2nd St., Flora, 01000084

Cook County
Chicago and North Western Railroad Depot, 6088 North Northwest Hwy., Chicago, 01000081
Olympia Fields Country Club,2800 Country Club Dr., Olympia Fields, 01000082

Du Page County
Immanuel Evangelical Church, 302 S. Grant St., Hinsdale, 01000085

Richland County
Hopkinson, Ambrose, House, 122 W. Elm St., Olney, 01000083

MASSACHUSETTS

Middlesex County
Bell Rock Memorial Park, Bounded by Main, Wigglesworth, Meridan, and Ellis Sts., Malden, 01000086

Plymouth County
Bridgewater Iron Works, Vic. of High St., Bridgewater, 01000087

Suffolk County
Brighton Center Historic District, Academy Hill R., Chestnut Hill Ave., Dighton, Elko, Henshaw, Leicester, Market, Washington, and Winship Sts., Boston, 01000088
Chelsea Garden Cemetery, Shawmut St., Chelsea, 01000089

SOUTH DAKOTA

Butte County
Lincoln School, (Schools in South Dakota MPS) 706 Jackson, Belle Fourche, 01000098

Clay County
Gunderson House, 24 S. Harvard, Vermillion, 01000092

Codington County
Fowler, C.E. and Bertha, House, 316 SE First Ave., Watertown, 01000096

Day County
Roslyn Auditorium, (Federal Relief Construction in South Dakota MPS) 510 Main, Roslyn, 01000097

Hughes County
Rowe House, 1118 E. Capitol, Pierre, 01000095

Lincoln County
Kennedy, C.B., Mansion, 903 N. Dakota St., Canton, 01000093

Meade County
Minneapolis Brewing Company Beer Warehouse, SD 212, Faith, 01000100

Moody County
South Dakota Dept. of Trans. Br. No. 51–124–136, (Historic Bridges in South Dakota MPS) Second St. over the Big Sioux R., Egan, 01000090

Pennington County
Swander Bakery Building, 301 12th St., Rapid City, 01000099

Union County
United Brethren Church, 31141 476th Ave., West Akron, 01000091

Yankton County
Burns House, 816 Pine St., Yankton, 01000094

TENNESSEE

Humphreys County
Fort Hill and Butterfield, Archibald D., House, (Archeological Resources of the American Civil War in Tennessee MPS) 201 Fort Hill Dr., Waverly, 01000101

TEXAS

Bee County
Bee County Courthouse, 105 W. Corpus Christi St., Beeville, 01000105

Dallas County
Turtle Creek Pump Station, 3630 Harry Hines Blvd., Dallas, 01000103

Fort Bend County
Moore, John M. and Lottie D., House, 406 S. Fifth St., Richmond, 01000104

Tarrant County
Marine Commercial Historic District, Roughly defined by N. Main St., bet. N. Side Dr. and N. 14th St., Fort Worth, 01000102

WISCONSIN

Crawford County

Tainter Cave, (Wisconsin Indian Rock Art Sites MPS) Address Restricted, Clayton, 01000106

Manitowoc County

Saint Luke's Church Complex, 1800–1816 Jefferson St., Two Rivers, 01000107

A request for REMOVAL for procedural error has been made for the following resource:

MISSOURI

Clay County

Clardy Heights Historic District (Liberty, Clay County, Missouri MPS AD) 716, 734, and 758 W. Liberty Dr. Liberty, 00001609

A request for removal has been made for the following resource:

WASHINGTON

Kittitas County

Kinkade, J.W., Farmstead Off US 7B Ellensburg vicinity, 82004257

[FR Doc. 01–1742 Filed 1–19–01; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–445]

Certain Plasma Display Panels and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. § 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 21, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of the Board of Trustees of the University of Illinois, of Urbana, Illinois, and Competitive Technologies, Inc., of Fairfield, Connecticut. Supplements to the complaint were filed on December 28, 2000 and January 3, 2001. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain plasma display panels and products containing same by reason of infringement of claims 22–26, 28–33, 36, and 38–41 of U.S. Letters Patent 5,081,400 and claims 10–11 of U.S. Letters Patent 4,866,349. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.10 (2000).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 16, 2001, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain plasma display panels or products containing same by reason of infringement of claims 22–26, 28–33, 36, or 38–41 of U.S. Letters Patent 5,081,400 or claims 10–11 of U.S. Letters Patent 4,866,349, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—The Board of Trustees of the University of Illinois, 352 Henry Administration Building, 506 South Wright Street, Urbana, Illinois 61801; and Competitive Technologies, Inc., 1960 Bronson Road, Fairfield, Connecticut 06430.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Fujitsu Limited, 6–1, Marunouchi 1–chome, Chiyoda-Ku, Tokyo 100–8211, Japan; Fujitsu General Limited, 1116, Svenaga, Takatsu-ku, Kawasaki, 213 Japan; Fujitsu General America Corp., 353 Route 46 West, Fairfield, New Jersey 07004; and Fujitsu Microelectronics, Inc., 3545 N. First Street, San Jose, California 95134.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–K, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR § 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting a response to the complaint will not be granted unless good cause therefor is shown.

Failure of any respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: January 16, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–1784 Filed 1–19–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 8, 2001, a proposed Partial Consent Decree in *United States* v. *American Scrap Company, et al.,* Civil Action No. 1:99–CV–2047, was lodged with the United States District Court for the Middle District of Pennsylvania.

In this action, the United States seeks the reimbursement of response costs in connection with the Jack's Creek/Sitkin Smelting Superfund Site in Mifflin County, Pennsylvania (''the Site''), pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The Partial Consent Decree resolves the United States' claims against Konica Graphic Imaging, Inc. (''Konica'') for response costs incurred as a result of the release or threatened release of hazardous substances at the Site. Konica will pay the United States $60,127.90. The Partial Consent Decree will not resolve the United States' claims against the remaining defendants in the litigation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *American Scrap Company, et al.,* D.J. Ref. 90–11–2–911/1.

The Partial Consent Decree may be examined at the Office of the United States Attorney, Middle District of Pennsylvania, Federal Building, 228 Walnut Street, Suite 220, Harrisburg, PA 17108, or at the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the Partial Consent Decree may also be obtained by mail by requesting a copy from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $4.25 (17 pages at 25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–1734 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under CERCLA Section 122(d)(2), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on January 5, 2001, a proposed Consent Decree (the ''Decree'') in *United States* v. *Philip Katz, et al.,* Civil Action No. JFM 01–63 was lodged with the United States District Court for the District of Maryland.

In this action the United States seeks reimbursement of response costs in connection with the Cherry Pit Drum Superfund Site in Anne Arundel, Howard, and Charles County, Maryland (the ''Site''). The Decree resolves the United States' claims under CERCLA Section 107(a) against Philip Katz, Arthur C. Isenhart, Authorized Trailer Services, Inc., Bernard A. Bailey, Southern Maryland Trailer Rental, Inc., Glen E. Shepke, and A–1 Storage Trailer, Inc. for response costs incurred as a result of the release or threatened release of hazardous substances at the Site. These parties will pay the United States $126,000. The Decree also resolves the United States' claims for civil penalties under CERCLA Section 104(e) against Bernard A. Bailey.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Philip Katz, et al.,* D.J. Ref. 90–11–3–06765.

The Decree may be examined at the Office of the United States Attorney, District of Maryland, 101 West Lombard Street, Baltimore MD 21201, and at U.S. EPA Region III Office of Regional Counsel, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Principal Deputy Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 01–1760 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a consent decree in United States v. Lightman, *et al.,* Civil No. 92–4710 (D.N.J.), was lodged on January 8, 2001 with the United States District Court for the District of New jersey.

The proposed consent decree embodies an agreement with Jerome Lightman and Lightman Drum Company, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, to pay approximately $550,000 in settlement of claims for EPA's past and future response costs at three Superfund sites, the D'Imperio Property Superfund Site in Hamilton Township, New Jersey, the Ewan Superfund Site in Shamong Township, New Jersey, and the Duane Marine Superfund Site in Perth Amboy, New Jersey.

The monies paid by the settling defendants under the consent decree will be used to reimburse past costs incurred at the three sites. The consent decree provides the settling defendants with releases for civil liability for EPA's past and future CERCLA response costs at the three sites.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to United States v. Lightman, *et al.,* DOJ Ref. No. 90–11–3–942A.

The proposed consent decree may be examined at the Office of the United States Attorney, Post Office Bldg., 4th Floor, 4th and Market Streets, Camden, NJ 08101, and at the Region II Office of the Environmental Protection Agency, Region II Records Center, 290 Broadway, 17th Floor, New York, NY 10007–1866. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page

reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–1733 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Consistent with Departmental policy, 28 CFR 50.7 and 38 FR 19029, notice is hereby given that on January 8, 2001, a proposed Consent Decree in *United States* v. *Hitchiner Manufacturing Company, Inc.*, Civil Action No. 01–11–JD was lodged with the United States District Court for the District of New Hampshire. The proposed Consent Decree will resolve the United States' claims under Section 309 of the Clean Water Act (''CWA''), 33. U.S.C. 1319, on behalf of the U.S. Environmental Protection Agency (''EPA'') against the defendant relating to the Beacon Street Facility and the Redington Street Facility, both located in Littleton, New Hampshire, and the Milford Facility, located in Milford, New Hampshire. The Complaint alleges that the defendant is liable under Section 309 of the Clean Water Act (''CWA''), 33 U.S.C. 1319.

Pursuant to the Consent Decree, the defendant agrees to pay to the United States a civil penalty of $525,000 and to perform injunctive relief. Further, the defendant agrees to: comply with the federal pretreatment standards for the Metal Finishing Point Source Category set forth at 40 CFR 433.17; comply with the General Pretreatment Regulations for Existing and New Sources of Pollution set forth at 40 CFR part 403, at its Beacon Street and Redington Street Facilities; begin monitoring all process wastewater discharged to the Town of Littleton's publicly owned treatment works from its Beacon Street and Redington Street Facilities; submit monthly reports on the samplying and analysis; and implement the individual Storm Water Pollution Prevention Plans, which were developed for each facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Hitchiner Manufacturing Company, Inc.*, Civil Action No. 01–11–JD, D.J. Ref. 90–5–1–1–06922.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Hampshire, U.S. Department of Justice, 55 Pleasant Street, Room 352, Concord, New Hampshire, 03301–3904, and at U.S. EPA New England (Region 1), One Congress Street, Suite 1100, Boston, Massachusetts, 02114–2023. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $6.75 payable to the Consent Decree Library.

Bruce Gelber,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–1732 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act and Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 8, 2000, a proposed consent decree in *United States* v. *Rhode Island Technical Plating, Inc.*, Civil Action No. 01–007L was lodged with the United States District Court for the District of Rhode Island.

In this action the United States sought injunctive relief and assessment of civil penalties in connection with the electroplating and metal finishing facility owned by Rhode Island Technical Plating (''RITP''), in Cranston, Rhode Island. The Complaint alleges that the defendant is liable under sections 3008(a) and 3008(g) of the Resource Conservation and Recovery Act (''RCRA'') and under Section 113(b) of the Clean Air Act. Pursuant to the decree, defendant will perform a RCRA facility investigation and take appropriate steps to bring its facility into compliance with applicable law. Defendant will also pay to the United States, a civil penalty of $20,000. This settlement is based, in part, on the Defendant's limited financial ability to pay.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* versus *Rhode Island Technical Plating, Inc.*, Civil Action No. 01–007L, D.J. Ref. 90–7–1–06063.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Rhode Island, 150 South Main Street, Providence, Rhode Island, 02906, and at U.S. EPA New England (Region 1), One Congress Street, Suite 1100, Boston, Massachusetts, 02114–2023. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 01–1731 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 213–2001]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to modify a system of records maintained by the Immigration and Naturalization Service (INS), specifically:

Security Access Control System (SACS), JUSTICE/INS–014, last published May 10, 1990 (55 FR 19674).

The system of records is being modified: (1) To add additional sites where the system is located, (2) add a new category of individual covered by the system, (3) to add four routine use disclosures, (4) expand the safeguards, (5) revise the System Manager section to include all Security Directors within the INS and (6) correct the Retention and Disposal section. Other minor changes and edits have also been made to the sections on Record Access Procedures and Contesting Record Procedures of the notice.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the modified system. The Office of Management and Budget (OMB), which has oversight responsibility under the

Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comment by (30 days from the publication date of this notice). The public, OMB, and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a, the Department has provided a report to OMB and the Congress.

Dated: January 8, 2001.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–014

SYSTEM NAME:

Security Access Control System (SACS).

SYSTEM LOCATION:

Headquarters, Regional and District offices, Administrative Centers, and other Immigration and Naturalization Service (INS) file control offices as detailed in JUSTICE/INS–999, last published in the **Federal Register** on April 13, 1999 (64 FR 18052).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

INS employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

SACS is an automated system which contains: employee name, badge number, social security number, physical descriptions, photographs, date, time and location of entry into and departure from INS buildings and office suites.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12356, 5 U.S.C. 552a(e)(10), Public Law Number 90–620, as amended (44 U.S.C. Chapters 21 and 23), 5 U.S.C. 301, and 40 U.S.C. 486(c), as implemented by 41 CFR 101–20.3 and 41 CFR 101–20.103. The Executive Order and statutes address the security of records maintained by Federal agencies, Public Buildings, Property and Works to include Conduct on Federal Property and Physical Protection and Building Security.

PURPOSE(S):

The purpose of the system is to improve the security of Federal records and property, and the safety of INS employees, by instituting a more effective means by which to detect unauthorized entry into the INS buildings. Access passes (i.e., card key) must be inserted into an electronic card reader which will record identifying data and will automatically unlock the entrance door if the pass is active and authorized.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To contractors who have been hired to perform Immigration and Naturalization Service functions to the extent necessary to enable them to perform their assigned duties.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media within the server and on data cartridges used as back-ups.

RETRIEVABILITY:

Records are retrieved by last name, social security number or numerically by access pass number.

SAFEGUARDS:

The databases is maintained in a locked room with access limited to the Security staff and INS management and supervisory officials. System users must sign on with INS assigned and approved user identification and password.

RETENTION AND DISPOSAL:

Data recorded on magnetic media within the server will be retained for a period of three years, at which time the information will be deleted. Information on data cartridges will be retained briefly until the date is erased by recording new data. Key accountability files (*i.e.,* files that relate to the accountability of issued card keys) are retained and disposed of in accordance with General Records Schedule 18, items 16 and 18.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Security and Security Officers at each INS office maintaining a database as noted in System Locations.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above.

RECORD ACCESS PROCEDURES:

Requests for access to records in this system shall be in writing, and should be addressed to the appropriate INS FOIS/PA Officer where the records are located or if unknown to the FOIS/PA Officer at 425 I Street, NW, Second Floor, Union Labor Life Building, Washington, DC 20536. Such requests may be submitted either by mail or in person. Clearly mark the envelop ''Privacy Act Request.'' The requester shall include a description of the general subject matter and provide his or here full name, date and place of birth, verification of identifying (in accordance with 8 CFR 103.21 (b)) and any other identifying information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

A determination as to the granting or denial of a request shall be made at the time a request is received. An individual who desires to request amendment of records maintained in the system should direct his or her request to the appropriate FOIS/PA Officer at the INS office where the record is maintained or (if unknown) to the INS FOIA/PA Officer at 425 I Street, NW, Second Floor, Union Labor Life Building, Washington, DC. 20536. The request should state clearly and concisely the information being contested, the reasons for contesting it and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

INS employees.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–1738 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 214–2001]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the

Immigration and Naturalization Service (INS), Department of Justice, proposes to modify the following system of records previously published July 31, 2000 (65 FR 46738):

Deportable Alien Control System (DACS), JUSTICE/INS–012

INS proposes to add two new routine use disclosures, identified as routine use (K) and (L). The purpose of routine use (K) is to allow legal service providers to call an INS detention facility in advance of a visit to the site, to determine whether a certain individual is detained. The release of the information is discretionary and will only pertain to whether or not the individual concerned is currently detained at that facility. Routine use (L) allows contractors working on behalf of INS to have access to necessary information to assist in this program.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the new routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by February 21, 2001. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification.

Dated: January 8, 2001.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–012

SYSTEM NAME:

Deportable Alien Control System (DACS).

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

* * * * *

K. To legal service providers who are authorized to represent individuals in removal proceedings with the United States Immigration and Naturalization Service, to assist individuals in INS custody acquire legal representation.

L. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

* * * * *

[FR Doc. 01–1739 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 215–2001]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Image Storage and Retrieval System, JUSTICE/INS–005, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) and (11) has been published.

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by February 21, 2001. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: January 8, 2001.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–005

SYSTEM NAME:

INS Image Storage and Retrieval System (ISRS).

SYSTEM LOCATIONS:

Headquarters, Regional Offices, Administrative Centers, Service Centers, District Offices, Ports of Entry, and file control offices of the Immigration and Naturalization Service in the United States as detailed in JUSTICE/INS–999, last published, April 13, 1999 (64 FR 18052). Other offices having access to the system are: The Law Enforcement Support Center, 188 Harvest Lane, Williston, Vermont 05495; the Central States Command Center, 10 West Jackson Boulevard, Chicago, Illinois 60604; and the Forensic Document Laboratory, 8000 Westpark Drive, Suite 325, McLean, Virginia 22101–3105.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons lawfully admitted for permanent residency; Asylees and Parolees lawfully admitted for employment authorization (although, Asylees and Parolees are not initially covered under the Privacy Act, these individuals often change their status to lawful permanent residents and at that time will be covered by the Privacy Act); Commuters and other persons authorized for frequent border crossing; Naturalized United States Citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of formatted data base records of personal biographical data including: Name, date of birth, mother's first name, father's first name, and country of birth; and biometric information (*i.e.,* fingerprints, digital images of facial picture, and signatures).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1321, and 1360.

PURPOSE(S):

This system of records is used: To verify controlled INS documents issued to individuals covered by the system; to assist the INS with its responsibility to detect and reduce fraudulent entry to the United States; and to detect and reduce the proliferation of fraudulent INS documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and National Archives

and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To the appropriate agency/organization/task force, regardless of whether it is Federal, State, local, foreign, or tribal, charged with the enforcement (*e.g.,* investigation and prosecution) of a law (criminal or civil), regulation, or treaty, of any record contained in this system of records which indicates either on its face, or in conjunction with other information, a violation or potential violation of that law, regulation, or treaty.

E. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

F. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

INS Image Storage and Retrieval System (ISRS) information is stored on magnetic media (internal image server disk drives).

RETRIEVABILITY:

Individual records are indexed and retrievable by name, alien registration number (A-number), and application receipt number. In cases where an individual record can not be retrieved by one of these key indexes, combinations of multiple data elements may be used (*e.g.* name, date of birth, and country of birth) if necessary, to assist in the identification and retrieval of a unique record.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, with access limited to INS and other Federal Government employees and authorized visitors. All records are stored in spaces which are locked outside of normal office hours at the Department of Justice Data Center. The automated equipment is physically accessible only by authorized Department of Justice personnel. Electronic access to the automated system is controlled by restricted password for use at remote terminals in secured areas.

RETENTION AND DISPOSAL:

Image Storage and Retrieval System data records are retained in the system for a period of 75 years and them destroyed.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Immigration Resources Management, Immigration and Naturalization Service, 800 I Street, NW., Room 700, Washington, DC 20536.

NOTIFICATION PROCEDURES:

Inquiries should be addressed to the system manager at the INS office where the record is maintained or (if unknown) to the FOIA/PA Officer, INS, 425 I Street NW., Second Floor, Union Labor Life Building, Washington, DC 20536.

RECORD ACCESS PROCEDURE:

Requests for access to records in this system shall be in writing and should be addressed to the System Manager noted above or to the appropriate FOIA/PA Officer as indicated in System Locations. Requests sent directly to the System Manager should be submitted by mail. Requests to the FOIA/PA Officer may be submitted by mail. Requests to the FOIA/PA Officer may be submitted either by mail or in person. If a request for access is made by mail, the envelope and letter shall be clearly marked Privacy Access Request. Include a description of the general subject matter and if known, the related file number. To identify a record, the requester should provide his or her full name, date and place of birth, verification of identity in accordance with 8 CFR 103.21(b) or provide a statement under penalty of perjury, alien number, the date and place of entry into or departure from the United States and any other identifying information which may be of assistance in locating the record. The requester shall also provide a return address for transmitting the records to be released.

CONTESTING RECORD PROCEDURES:

An individual desiring to request amendments of records maintained in this system should direct his or her request to the System Manager or to the appropriate FOIA/PA Officer noted in System Locations. The request should state the information being contested, the reason(s) for contesting it, and the proposed amendment thereof. Persons filing such requests should mark the envelope with the following legend Privacy Act Amendment Request.

RECORD SOURCE CATEGORIES:

Basic information contained in this INS data repository is supplied by aliens wishing to seek entry to the United States and/or those already in the United States seeking benefits from the Immigration and Naturalization Service. External entities including Department of State overseas consular offices and United States embassies and the Department of Labor may also provide data on individuals seeking entry into the United States.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–1740 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 216–2001]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The I–551 Renewal Program Temporary Sticker Issuance I–90 Manifest System (SIIMS), JUSTICE/INS–033, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) and (11) has been published.

In accordance with 5 U.S.C. 552a(e) and (11), the public is given a 30-day period in which to comment on proposed routine use disclosures. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 40-day period in which to conclude its review of the proposal. OMB, the Congress, and the public, are invited to send written comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a, the Department has provided a report to OMB and the Congress.

Dated: January 8, 2001.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/INS–033

SYSTEM NAME:

I—551 Renewal Program Temporary Sticker Issuance I–90 Manifest System (SIIMS).

SYSTEM LOCATION:

Immigration and Naturalization Service (INS) Headquarters, Service Centers, District Offices, sub-offices, and Ports of Entry, as detailed in JUSTICE/INS–999, published April 13, 1999 (64 FR 18052).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are: covered by provisions of the Immigration and Nationality Act of the United States; have been lawfully admitted permanent residents for at least ten years; and are in possession of an expiring or expired Form I–551 (Permanent Resident Card, previously known as the Alien Registration Card), and have properly filed a Form I–90 (Application to Replace Alien Registration Card), with appropriate fee, for renewal of this expiring/expired I–551, at the District or sub-office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records from this system are in automated and paper form. The records identify the sticker number applied to the back of the I–551 after an I–90 application and fee has been accepted. The system also includes the alien number and name of the applicant; the type and amount of fee remittance accepted; the location where the application was accepted; the date of the application; and the identification of the individual issuing the sticker.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. Sections 1103, 1154, 1304, 1305, and 1360.

PURPOSE(S):

The system enables INS to track the issuance of the stickers, and provides for accountability and control of specific sticker issuance. In some instances, field inquiries of the system also will enable INS to determine if a particular sticker was properly issued and/or is a legitimate issuance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed as follows:

A. To Federal, State, tribal, and local government law enforcement and regulatory agencies, foreign governments, and individuals and organizations during the course of investigation in the processing of a matter, or a proceeding within the purview of the immigration and nationality laws, to elicit information required by INS to carry out its functions and statutory mandates.

B. To a Federal, State, tribal, local or foreign government agency or organization, or international organization, lawfully engaged in collecting law enforcement intelligence information, whether civil or criminal, and/or charged with investigating, prosecuting, enforcing or implementing civil and/or criminal laws, related rules, regulations or orders, to enable these entities to carry out their law enforcement responsibilities, including the collection of law enforcement intelligence.

C. To either a party or the tribunal in a proceeding before a court or other adjudicative body before which INS or the Department of Justice (DOJ) is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by INS, or DOJ, to be relevant to the litigation: (1) The DOJ, or any DOJ component, or any subdivision thereof; (2) any DOJ employee in his or her official capacity; (3) any DOJ employee in his or her individual capacity where the DOJ has agreed to represent the employee or has authorized a private attorney to represent him or her; and (4) the United States, where the INS or the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

D. To a Federal, State, local or foreign government agency in response to its request, in connection with the hiring or retention by such agency of an employee, the issuance of a security clearance, the reporting of an investigation of such an employee, the letting of a contract, or the issuance of a license, grant, loan or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

E. To a Federal, State, local, tribal, or foreign government agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a decision of INS concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

F. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. To a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

H. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

I. To an attorney or representative acting on behalf an individual covered by this system of records in connection with any proceeding before the INS or the Executive Office for Immigration Review.

J. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

K. Pursuant to subsection (b)(3) of the Privacy Act, the Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Information will be stored on magnetic disks and/or tape in INS Headquarters. Paper records will be stored in INS offices, file drawers, and/or filing cabinets.

RETRIEVABILITY:

Information will be retrievable by sticker number. Other specific information reports may be generated for quality control and verification

purposes. The reports can be retrieved by date, location, issuing agent, and/or alien number.

SAFEGUARDS:

Most INS offices are located in buildings under security guard, with access limited to INS and other Federal Government employees and authorized visitors. All records are stored in spaces which are locked during non-duty office hours. Many records are stored in cabinets or machines which are also locked during non-duty office hours. Access to automated records is controlled by passwords and name identifications.

RETENTION AND DISPOSAL:

The sticker issuance data in the electronic tracking system is maintained for three years and then destroyed. The sticker issuance in manifest form is downloaded from the electronic system and maintained in case of inquiries. It is maintained for three years and then destroyed. The Form I–90 applications are mailed to the Service Centers where they are placed in application receipt files, maintained for ten years, and then destroyed. If a Form I–90 application is denied, it is placed in the alien file. NOTE: Alien files and the Central Index System (CIS) contain all relevant information pertaining to the permanent resident status of the applicant and are maintained for 75 years.

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Field Services Operation, Immigration Services Division, Immigration and Naturalization Service, 801 I Street NW, Room 900, Washington, DC 20536.

NOTIFICATION PROCEDURE:

Any inquiries regarding specific sticker issuance information contained in this system should be addressed in writing to the System Manager listed above or to the Freedom of Information Act/Privacy Act (FOIA/PA) officer where the record is located (See System Location).

RECORD ACCESS PROCEDURE:

Requests for access to a record from this system shall be in writing. Clearly mark the envelope and letter ''Privacy Act Request.'' The requester shall provide his or her full name, the sticker issuance number, the general nature of the inquiry, and if possible the date that the application was filed at the INS office and the location of the INS office where the application was accepted. The requester also shall provide date and place of birth, verification of identity [in accordance with 8 CFR 103.21(b) or a sworn statement under penalty of perjury], his or her notarized signature, and any other information that may assist in identifying and locating the record. The requester also should provide a return address for transmitting the record(s) to be released.

CONTESTING RECORDS PROCEDURE:

Direct all requests to contest or amend information to the System Manager or FOIA/PA officer as indicated above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope ''Privacy Act Amendment Request.'' The record must be identified in the same manner as described for making a request for record access (see above). To facilitate the expeditious handling of the amendment request, include a copy of the response received to the Privacy Act Request.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is obtained from the applicant during the issuance of an I–551 extension after an applicant has filed an I–90 to renew and expiring/expired I–551 in his or her possession.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 01–1741 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: Notice of Information Collection Under Review; Existing Collection in use without an OMB control number; National Sex Offender Registry.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by January 24, 2001. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Beth Saymon, Acting Unit Chief, Review, Analysis, and Development Unit, Program Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, WV 26306.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this collection:

(1) Type of information collection: Existing Collection in use without an OMB control number.

(2) *Title of Form/Collection:* National Sex Offender Registry

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Federal Bureau of Investigation.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary—50 States, 5 territories, the District of Columbia, and registered sex offenders who moved to another state. The National Sex Offender Registry data is collected from the 50 states, 5 territories, and the District of Columbia. In addition registered sex offender must notify the FBI when they move to another state. The state must notify the Federal Bureau of Investigation if they cannot

verify the address or locate a person required to register with the states registration program. The registry was established by the FBI in accordance with Federal law (42 U.S.C. 14072) in order to track the whereabouts and movements of persons who have been convicted of a criminal offense against a victim who is a minor; persons who have been convicted of a sexually violent offense; and persons who are sexually violent predators.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Number of respondents: 56 government entities and 8,400 registered sex offenders annually. The estimated time for the average respondent to respond: 2 minutes per transaction, average 250,000 total transaction per year.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 8,333 total annual burden hours [250,000×2=500,000 minutes/60 minutes.]

If additional information is required contact: Robert B. Briggs, Department Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: January 16, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–1846 Filed 1–19–01; 8:45 am]

BILLING CODE 4401–02–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 218–2001]

Privacy Act of 1974; System of Records

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Notice.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice, Federal Bureau of Investigation (FBI), is amending the following system of records which was originally published in the **Federal Register** on November 25, 1998 (63 FR 65223), and was amended on December 14, 2000 (65 FR 78190):

The National Instant Criminal Background Check System (NICS) JUSTICE/FBI–018.

Opportunity for Comment: The Privacy Act (5 U.S.C. 552a(e)(4) and (11)) requires that the public be given 30 days in which to comment on any new or amended uses of information in a system of records. In addition, in accordance with Privacy Act requirements (5 U.S.C. 552a(r)), the Department of Justice has provided a report on these modifications to OMB and the Congress. OMB, which has oversight responsibilities under the Act, requires that OMB and the Congress be given 40 days in which to review major changes to Privacy Act systems. Therefore, the public, OMB, and the Congress are invited to submit written comments on this modification.

Address Comments or Requests for Further Information to: Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

EFFECTIVE DATE: These proposed changes will be effective March 5, 2001 unless comments are received that result in a contrary determination.

SUPPLEMENTARY INFORMATION: The Department is modifying the system of records to include one new routine use. This new routine use provides for disclosure of information in the NICS Audit Log to the Bureau of Alcohol, Tobacco, and Firearms (ATF) in connection with ATF's inspections of Federal Firearms Licensee records. The notice is also being modified to reflect that information about allowed transfers will only be retained in the NICS Audit Log for 90 days, unless such information is needed to pursue identified cases of misuse. Revisions to 28 CFR part 25 which underlie these changes are being implemented in the Rules section of today's **Federal Register**.

The notice is also being revised to clarify that system limitations on retaining information only apply to allowed transactions.

Accordingly, the system of records is modified as provided below.

Dated: January 12, 2001.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Justice/FBI–018

SYSTEM NAME

National Instant Criminal Background Check System (NICS).

ACTION

The system notice published in the **Federal Register** on November 25, 1998 (63 FR 65223), and amended on December 14, 2000 (65 FR 78190), is further amended as follows:

1. In the section titled ''Categories of Individuals Covered by the System,'' subsection L is amended by changing the fourth and fifth sentences so that the subsection now reads as follows:

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

* * * * *

L. Has applied for the transfer of a firearm or for a firearms-related permit or license and has had his or her name forwarded to the NICS as part of a request for a NICS background check. (Identifying information about this category of individuals is maintained for system administration and security purposes in the ''NICS Audit Log,'' a system transaction log described below under the headings ''CATEGORIES OF RECORDS IN THE SYSTEM'' and ''RETENTION AND DISPOSAL.'' Identifying information may also be maintained in appeals files for those individuals who have requested the reason for a denial or delay from the FBI, or from a law enforcement agency serving as a POC, and/or challenged the accuracy or validity of a disqualifying record or otherwise inquired about a NICS transaction. In cases of allowed transfers, all information in the NICS Audit Log related to the person or the transfer, other than the NICS Transaction Number (a unique number assigned to each valid background request inquiry) assigned to the transfer and the date the number was assigned, will be destroyed after not more than 90 days after the transfer is allowed, provided that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system. In such cases, the system will not contain any details about the type of firearm which is the subject of the proposed transfer (other than the fact that it is a handgun or long gun) or whether a sale or transfer of a firearm has actually taken place.)

2. The section titled ''Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses'' is amended by adding a new subparagraph (''J'') at the end to read as follows:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

* * * * *

J. Information in the NICS Audit Log (including records of approved and denied transfers) may be disclosed to the Bureau of Alcohol, Tobacco, and Firearms (ATF) in connection with

ATF's inspections of Federal Firearms Licensee records.

3. In the section titled ''Retention and Disposal'' the second paragraph is amended to read as follows:

RETENTION AND DISPOSAL

* * * * *

The FBI will maintain an audit Log of all NICS transactions. Firearms transaction approvals will be maintained for 90 days (except that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system). The NICS Transaction Number (the unique number assigned to the NICS transaction) and the date on which it was assigned will be maintained indefinitely. Information related to firearms transfer denials will be retained for 10 years and then disposed of as directed by the National Archives and Record Administration.

* * * * *

[FR Doc. 01–1612 Filed 1–19–01; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Office of Small Business Programs Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies 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 Office of Small Business Programs (OSBP) is soliciting comments concerning the proposed new collection of the Small Business Programs Information Management System. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before March 23, 2001.

ADDRESSEES: Send comments to Elaine B. Murrell, Small Business Advisor, U.S. Department of Labor, Office of Small Business Programs, Room C–2318, 200 Constitution Avenue, NW., Washington, DC 20210; E-Mail: *murrell-elaine@dol.gov*; Telephone: 202–693–6467 (this is not a toll free number); Fax: 202–693–6485.

FOR FURTHER INFORMATION CONTACT: Elaine B. Murrell, telephone: 202–693–6467.

SUPPLEMENTARY INFORMATION:

I. Background

Federal agencies are required to promote procurement opportunities for small, small disadvantaged, and 8(a) businesses by the Small Business Act, as amended, (Public Law 95–507, Sections 8 and 15) and Pub. L. 100–656 (Sections 502 and 503). The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) mandates similar efforts for small women-owned businesses. Public Law 106–50 created the program for service-disabled veteran-owned small businesses. Public Law 105–135 established the HubZone program. The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) requires Federal agencies to make available to small businesses compliance guides and assistance on the implementation of regulations and directives of enforcement laws they administer. Executive Orders 12876, 12900, and 13021 direct Federal agencies to implement programs, respectively, regarding Historically Black Colleges and Universities, Educational Excellence for Hispanic Americans, and Tribal Colleges and Universities that are administered by the respective White House Initiative offices (in the U.S. Department of Education). Executive Order 13125 directs Federal agencies to ensure that Asian Americans and Pacific Islanders are afforded opportunity to fully participate in Federal Programs. Further, Executive Order 13170 requires that Departments take a number of actions to increase outreach and maximize participation of small disadvantaged businesses in their procurements. Executive Order 13157 strengthens the executive branch's commitment to increased opportunities for women-owned small businesses. Accordingly, the Small Business Programs Information Management System is needed to gather, document, and manage identifying information for four Office of Small Business Programs constituency groups: Small Businesses; Trade Associations; Minority Colleges and Universities; and Tribal Governments. Via this system, the constituent groups will have the opportunity to voluntarily provide to OSBP information about their organizations. The information will be used by OSBP and DOL agencies to maximize communication with the respective constituency groups regarding relevant OSBP and DOL programs, initiatives, and procurement opportunities; to track and solicit feedback on customer service to group members; and to facilitate registration of group members for OSBP-sponsored activities.

II. Review Focus

The Office of Small Business Programs is particularly interested in comments which:

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

III. Current Actions

There are no current actions.

Type of Review: New Collection.

Agency: Office of Small Business Programs.

Title: Small Business Program Information Management System.

OMB Number: 1290–0NEW.

Agency Number: OSBP 1.

Affected Public: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Governments.

Total Respondents: 4,000.

Total Responses: 6,000.

Frequency: On Occasion.

Average Time Per Response: 7 minutes.

Estimated Total Burden Hours: 700 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 16th day of January, 2001.

June M. Robinson,

Director, Office of Small Business Programs.

[FR Doc. 01–1615 Filed 1–19–01; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, Section 171(d), Demonstration Program: Incumbent/Dislocated Worker Skill Shortage II Demonstration Program; Notice of Changes to Solicitation for Grant Applications (SGA)

On October 31, 2000, the Department of Labor (DOL) announced in the **Federal Register** (65 FR 64991–65007; FR Doc. 00–27930) a solicitation for grant applications (SGA) for the Incumbent/Dislocated Worker Skill Shortage II Demonstration Program (Reference: SGA/DFA 00–113). Proposals for this SGA were to be submitted by 4:00 p.m. Eastern Time on Tuesday, January 16, 2001.

Included among the requirements for activities under this demonstration program was the use of the lower living standard income level (LLSIL) as a wage standard for certain jobs to be filled by demonstration participants who were successful training completers. The relevant portion of the SGA at Part II, Section D., Wages noted:

> Proposals must provide assurance that all participating firms which employ successful training completers have committed to pay wages to these completers * * * at a level at least equal to meeting the lower living standard income level as defined in Section 101(24) of WIA.

As a result of several inquiries regarding the LLSIL and in further consideration of this matter, the Department wishes to both clarify its intent and to change this requirement as originally announced. Because the LLSIL is adjusted for several factors, some inquirers have suggested that use of this standard in connection with its adjustments for family size could violate current equal pay protection standards. The Department wishes to note that violation of equal pay protection standards is not the intended use of the LLSIL in this SGA and regrets any misunderstanding in this matter.

Effective this date, Part II, Section D., Wages of the referenced SGA is replaced as follows:

> Proposals must provide assurance that all participating firms which employ successful training completers have committed to pay wages to these completers at the wage level set by any collective bargaining agreement which covers positions to be filled by the project participants, or, if no such agreement exists, at a level at least equal to meeting the lower living standard income level as defined in Section 101(24) of WIA for a family of four.

As the above change indicates, the LLSIL, when used, is to be applied in the amounts applicable to a family of four. By standardizing the application of the LLSIL to this family size for this demonstration, a uniform wage level will be applicable for all persons regardless of their respective family sizes. All other adjustments to the LLSIL (regional, metropolitan, urban and rural differences) will continue to be applicable as provided in Section 101(24) of WIA.

(Information on the current LLSIL's may be found at: www.wdsc.org/llsil/ or in the **Federal Register** (65 FR 30630–30636; FR Doc. 00–11978))

To allow additional time for applicants to consider this notice, the Department hereby reopens and extends the deadline for receipt of proposals for this SGA until 4:00 p.m. Eastern Time on Wednesday, February 21, 2001. In addition, applicants who submitted proposals by the original deadline of January 16, 2001 are invited to amend their proposals accordingly by this new deadline.

Other than indicated herein, the requirements established by the above referenced October 31, 2000 SGA (SGA/DFA 00–113) remain in force.

Signed at Washington, DC, this sixteenth day of January 2001.

Laura A. Cesario,

Grant Officer, Division of Federal Assistance.

[FR Doc. 01–1696 Filed 1–17–01; 11:06 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Senior Community Service Employment Program; Notice of Town Hall Meeting on the 2000 Amendments to the Older Americans Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Town Hall Meeting.

SUMMARY: Notice is given of the first in a series of Town Hall Meetings that the Department of Labor intends to convene to assist in the identification of issues to be addressed in the implementation of changes to the Senior Community Service Employment Program (SCSEP) occasioned by the Older Americans Act Amendments of 2000, and to obtain the benefit of various practitioners' concerns and experiences in the operation of the SCSEP. Town Hall Meetings will be held in various locations throughout the country, in order to facilitate the participation of all interested individuals.

DATES: The first Town Hall Meeting will be held on Monday, January 22, 2001, from 7:00 p.m. to 9:00 p.m. The date, location and time for subsequent Town Hall Meetings will be announced in advance in the **Federal Register**.

ADDRESSES: The first Town Hall Meeting will be held at the Westin Peachtree Plaza Hotel at 210 Peachtree Street, NW., Atlanta, Georgia, in conjunction with the National Older Worker Conference sponsored by the National Association of State Units on Aging.

FOR FURTHER INFORMATION CONTACT: Mr. Erich W. (''Ric'') Larisch, Chief, Division of Older Worker Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N4644, Washington, DC 20210, Telephone: (202) 693–3742 (voice) TTY (202) 693–2871 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The purpose of the Town Hall Meetings is to provide each interested individual with an opportunity to comment on the Department of Labor's approach to the implementation of changes to the SCSEP occasioned by the revisions to title V of the Older Americans Act Amendments of 2000 (OAA) (Pub. L. 106–501) (dated November 13, 2000). Each attendee is welcome to offer comments on a variety of subjects, including: (1) Issues and concerns that should be addressed in regulations; (2) issues and concerns that should be addressed in policy guidance; (3) suggestions and comments on the overall implementation plan, such as consultation strategies; (4) specific suggestions on the approach that should be taken in implementing any or all of the new title V provisions; and (5) suggestions on revisions that should be made to the existing title V regulations which were published in the **Federal Register** on Wednesday, May 17, 1995 (20 CFR part 641).

PUBLIC PARTICIPATION:

All interested individuals are invited to attend this Town Hall Meeting.

Persons wishing to make statements or presentations at the Town Hall Meetings should limit oral statements to 5 minutes, but extended written statements may be submitted for the record. Written statements may also be submitted without presenting oral statements. Individuals may submit written comments to the Employment and Training Administration, Division of Older Worker Programs, 200 Constitution Avenue, NW., Room N4644, Washington. DC 20210, Attention: Mr. Erich W. (''Ric'') Larisch.

Minutes of all Town Hall Meetings and summaries of other documents will be available to the public on the SCSEP website http://www.wdsc.org/owprog. Any written comments on the minutes should be directed to Mr. Erich W. (''Ric'') Larisch, as shown above.

Individuals with disabilities who are planning to attend the Atlanta Town Hall Meeting should contact Ms. Theresa Lambert of the National Association of State Units on Aging at (202) 898–2578, (this is not a toll-free number) if special accommodations are needed.

Signed at Washington DC, this 17 day of January, 2001.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 01–1801 Filed 1–19–01; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10571, et al.]

Proposed Exemptions; Keystone Brokerage, Inc. (Keystone)

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Keystone Brokerage, Inc. (Keystone), et al. Located in Williamsport, PA

[Application No. D–10571]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).[1]

Section I. Covered Transactions

If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of 4975(c)(1)(A) through (D) of the Code shall not apply, effective October 3, 1997 through June 30, 2000, to the purchase or redemption of shares, by a self-directed individual retirement account (the IRA), of investment portfolios (the Portfolios) of certain mutual funds that were affiliated with Keystone (the Affiliated Funds) or in other mutual funds that were unaffiliated with Keystone (the Third Party Funds),[2] in connection with the IRA's participation in the KeyPremier Nautilus Series Program, or its successor, the Nautilus Series Program, (together, the Investment Advisory Program).

In addition, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) and (F) of the Code, shall not apply, effective October 3, 1997 through June 30, 2000, to (1) the provision, by Keystone, of asset allocation and related services to an independent fiduciary of an IRA (the Independent Fiduciary), which resulted in the selection of Portfolios in the Investment Advisory Program by the Independent Fiduciary for the investment of IRA assets; and (2) the receipt of fees by Martindale Andres & Co., Inc. (Martindale) and Governor Group Advisors, Inc. (GGA), affiliates of Keystone, in connection with provision of investment advisory or sub-advisory services to the Fund Portfolios.

This proposed exemption is subject to the conditions set forth below in Section II.

[1] This proposed exemption applies to IRAs described in section 408(a) of the Code. Pursuant to 29 CFR 2510.3–2(d), the IRAs are not ''employee benefit plans'' covered under Title I of the Act. However, the IRAs are subject to jurisdiction pursuant to section 4975 of the Code.

[2] The Affiliated Funds and the Third Party Funds are collectively referred to herein as the Funds.

Section II. General Conditions

(a) The participation by an IRA in the Investment Advisory Program was approved by an Independent Fiduciary.

(b) As to each IRA, the total fees that were paid to Keystone and its affiliates constituted no more than reasonable compensation for the services provided.

(c) With the exception of distribution-related fees paid to Keystone pursuant to Rule 12b–1 (the Rule 12b–1 fees) of the Investment Company Act of 1940 (the Investment Company Act) which were offset, no IRA paid a fee or commission by reason of the acquisition or redemption of the shares of the Funds.

(d) The terms of each purchase or redemption of shares in the Funds remained at least as favorable to an investing IRA as those obtainable in an arm's length transaction with an unrelated party.

(e) Keystone provided written documentation to each IRA's Independent Fiduciary of its recommendations or evaluations regarding the Fund Portfolios as well as the design and parameters with respect to an asset allocation model (the Asset Allocation Model), based upon objective criteria that were uniformly applied.

(f) Any recommendation or evaluation made by Keystone to an Independent Fiduciary was implemented only at the express direction of such Independent Fiduciary.

(g) The quarterly fee paid by an IRA to Keystone and its affiliates for asset allocation and related services rendered to such IRA under the Investment Advisory Program (the Outside Fee) was offset by—

(1) All gross investment management fees (the Advisory Fees) that were paid by the Affiliated Funds to Keystone, including any sub-advisory fees that were paid by the Affiliated Funds to third party sub-advisers;

(2) All administrative fees (the Administrative Fees) that were paid to GGA and BISYS Fund Services Limited Partnership (BISYS), an unrelated party; and

(3) All Rule 12b–1 Fees that were paid by the Third Party Funds to Keystone or its current and former affiliates with respect to an Investment Advisory Account (the Account), such that the sum of the offset and the net Outside Fee always equaled the aggregate Outside Fee, thereby making the selection of Affiliated Funds or Third Party Funds revenue-neutral.

(h) With respect to its participation in the Investment Advisory Program, prior to purchasing shares in the Portfolios of the Affiliated Funds and the Third Party Funds—

(1) Each Independent Fiduciary received the following written or oral disclosures from Keystone:

(A) A brochure describing the Investment Advisory Program; an Investment Advisory Program Account Agreement (the Account Agreement); a description of the Asset Allocation Models; and a reference guide/disclosure statement providing details about the Investment Advisory Program, the fees charged thereunder, the procedures for establishing, making additions to and withdrawing from the Accounts, and other related information;

(B) A risk tolerance and goal analysis questionnaire (the Questionnaire) or a written report of responses given by the Independent Fiduciary in a personal interview (the Interview) with a Keystone representative (the Interview Report);

(C) Copies of applicable prospectuses (the Prospectuses) for the Fund Portfolios discussing the investment objectives of the Portfolios; the policies employed to achieve the objectives of the Portfolios; the corporate affiliation existing between Keystone and its affiliates; the compensation paid to such entities; disclosures relating to rebalancing and reallocating Asset Allocation Models; and information explaining the risks attendant to investing in Portfolios for the Affiliated Funds and the Third Party Funds;

(D) Upon written or oral request to Keystone, a Statement of Additional Information supplementing the applicable Prospectus, which described the types of securities and other instruments in which the Portfolios could invest and the investment policies and strategies that the Portfolios could utilize, including a description of the risks;

(E) A copy of the Account Agreement between the IRA and Keystone relating to the IRA's participation in the Investment Advisory Program;

(F) A written recommendation of a specific Asset Allocation Model, together with a copy of the Questionnaire and response or the Interview Report;

(G) Upon written request to Keystone, a copy of any investment advisory agreement or sub-advisory agreement between Keystone and the Affiliated Funds; and

(H) Written disclosures of Keystone's affiliation or non-affiliation with the parties who act as sponsors, distributors, administrators, investment advisers and sub-advisers, custodians and transfer agents of the Portfolios.

(2) If accepted as an investor in the Investment Advisory Program, the Independent Fiduciary was required to acknowledge in writing to Keystone prior to purchasing shares of the Fund, that such Independent Fiduciary had received copies of the documents described in paragraph (h)(1) of this Section II and represent to Keystone that such individual was—

(A) Independent of Keystone and its affiliates;

(B) Knowledgeable with respect to the IRA in administrative matters and funding matters related thereto; and

(C) Able to make an informed decision concerning participation in the Investment Advisory Program.

(i) Subsequent to its participation in the Investment Advisory Program, each Independent Fiduciary received the following written or oral disclosures from Keystone with respect to ongoing participation:

(1) Written confirmations of each purchase or redemption transaction involving shares of an Affiliated Fund or a Third Party Fund Portfolio (including transactions resulting from the realignment of assets caused by a change in the Asset Allocation Model's investment mix and from periodic rebalancing of Account assets);

(2) Telephone quotations of such Independent Fiduciary's IRA Account balance;

(3) A periodic, but not less frequently than quarterly, Statement of Account specifying the net asset value of the IRA's assets in such Account, a summary of purchase, sale and exchange activity and dividends received or reinvested, a summary of cumulative realized gains and/or losses, and a statement of fees paid to Keystone and its affiliates;

(4) Semiannual and annual reports that included financial statements for the Portfolios;

(5) A quarterly report pertaining to the applicable Asset Allocation Model describing the Asset Allocation Model's performance during the preceding quarter; market conditions and economic outlook; and, if applicable, prospective changes in Portfolio allocations for the Asset Allocation Model and the reasons therefor;

(6) At least annually, a written or oral inquiry from Keystone to ascertain whether the information provided on the Questionnaire or in the Interview Report was still accurate or required updating; and

(7) At least annually during the first calendar quarter of each year after March 24, 1999, or at other times specified in Section II(l), a termination form (the Termination Form), meeting the requirements of Section II(k) and (l) below.

(j) If authorized in writing by the Independent Fiduciary, the IRA was automatically rebalanced on a quarterly basis by Keystone (using the net asset values of the affected Funds as of the close of business on a pre-established date) to the Asset Allocation Model previously prescribed by the Independent Fiduciary, if one or more Fund allocations deviated from the Asset Allocation Model prescribed by the Independent Fiduciary because—

(1) At least one transaction required to rebalance the IRA among the Funds involved a purchase or redemption of securities valued at $250 or more; and

(2) The net asset value of the Fund affected was more than 5 percent of the IRA's investment in such Fund.

(k) Keystone was authorized to provide written notice to the Independent Fiduciary, at least 30 days prior to the implementation of any of the following changes:

(1) A change in the asset mix outside the current Asset Allocation Model;

(2) The division of a class of assets (the Asset Class);

(3) The replacement of a Third Party Fund with an Affiliated Fund, or an Affiliated Fund with a Third Party Fund; and

(4) An increase in the Outside Fee.

(l) The written notice described above in Section II(k) was required to—

(1) State that the Independent Fiduciary could terminate the IRA's participation in the Investment Advisory Program at will and without penalty, upon receipt by Keystone of written notice from the Independent Fiduciary; and

(2) Explain that any of the proposed changes noted in paragraphs (k)(1)–(4) of Section II would go into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

(3) For changes occurring after March 24, 1999, the notice was to be accompanied by a Termination Form containing instructions identical to those set forth above in paragraphs (l)(1)–(2) of this Section II.

(m) Keystone was not authorized to replace an Affiliated Fund with a Third Party Fund Portfolio or vice versa, nor was Keystone authorized to make an additional Third Party Fund Portfolio available for investment under the Investment Advisory Program.

(n) Keystone will maintain, for a period of six years, the records necessary to enable the persons described in paragraph (o) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Keystone and/or its affiliates, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than Keystone, shall be subject to the taxes imposed by section 4975(a) and 4975(b) of the Code if the records are not maintained or are not available for examination as required by paragraph (o) of this Section II below.

(o)(1) Except as provided in section (o)(2) of this paragraph, the records referred to in paragraph (o) of this Section II are unconditionally available at their customary location during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission;

(B) Any Independent Fiduciary of a participating IRA or any duly authorized representative of such Independent Fiduciary; and

(C) Any participant or beneficiary of any participating IRA or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (o)(1)(B) and (o)(1)(C) of this paragraph (o) are authorized to examine the trade secrets of Keystone or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''Keystone'' means Keystone Brokerage, Inc. and any affiliate of Keystone, as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of Keystone includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Keystone; (For purposes of this subparagraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any individual who is an officer, director or partner in Keystone or a person described in subparagraph (b)(1); and

(3) Any corporation or partnership of which Keystone or an affiliate or a person described in subparagraphs (b)(1) or (b)(2) of this Section III, is a 10 percent or more partner or owner.

(c) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer performing a policy-making function for the entity.

(d) The term ''IRA'' includes a self-directed individual retirement account which is described in section 408(a) of the Code and which is not an ''employee benefit plan'' covered under Title I of the Act. The term ''IRA'' does not include any IRAs that were sponsored or maintained by Keystone or its affiliates for their own employees nor does it include any IRAs that were held by employees of Keystone or its affiliates in their individual capacities.

(e) The term ''Independent Fiduciary'' means an individual who was covered under a self-directed IRA which invested in shares of the Funds.

(f) The term ''Asset Class'' means an asset class under a classification system used by Morningstar, Inc. (Morningstar) or Lipper, Inc. (Lipper). For purposes of this exemption, two Funds were not in the same Asset Class if they were classified differently under either the Morningstar or Lipper classification systems. Thus, for example, if two Funds were treated in separate Asset Classes under the Morningstar system, they would be treated as being in separate Asset Classes even if the Funds were in the same Asset Class (or were not classified at all) under the Lipper system.

(g) The term ''Affiliated Fund'' means a portfolio of an investment company registered under the Investment Company Act for which Keystone or an affiliate acted as the investment adviser and may have also acted as the sub-adviser, co-administrator or custodian.

(h) The term ''Third Party Fund'' means a portfolio of an investment company that is registered under the Investment Company Act for which neither Keystone nor any affiliate acted as an investment adviser, sub-adviser, co-administrator or custodian.

(i) The ''Advisory Fees'' refer to the investment advisory fees that were paid by the Affiliated Funds to Keystone and its affiliates.

(j) The ''Administrative Fees'' refer to the co-administration fees that were paid by the Affiliated Funds to GGA and BISYS.

(k) The ''Rule 12b–1 Fees'' were paid to Keystone and its affiliates by the Third Party Funds in connection with certain distribution-related services (*e.g.*, advertising) that were made pursuant to a written plan of distribution.

EFFECTIVE DATE:

If granted, this proposed exemption will be effective from October 3, 1997 until June 30, 2000.

Summary of Facts and Representations

Description of the Parties

1. The parties to the transactions are described as follows:

(a) *Keystone Financial, Inc. (KFI)* is a bank and financial services holding company headquartered in Harrisburg, Pennsylvania. KFI provides a full range of banking and non-banking services to persons and entities in Pennsylvania, Maryland, West Virginia, Virginia, New York, Ohio and Delaware.

(b) *Keystone* is a second-tier subsidiary of KFI. Keystone provided services to the IRAs under the Investment Advisory Program described herein and served as a broker-dealer for trades under such Program.

(c) *Key Trust Company (KeyTrust)* of Horsham, Pennsylvania, is a subsidiary of KFI. KeyTrust served as custodian for those IRAs utilizing the Investment Advisory Program.

(d) *Martindale* of West Conshocken, Pennsylvania, is a subsidiary of KFI. Martindale served as the sub-adviser to the Affiliated Funds and prior to February 1, 1999, it served as the investment adviser to such Funds.

(e) *BISYS* of Columbus, Ohio, is a registered broker-dealer. As noted above, BISYS is not affiliated with Keystone, KFI, KeyTrust or Martindale. BISYS, through its affiliated clearing broker, Corelink Financial, Inc. (Corelink), acted as the clearing broker with respect to purchases and sales of Fund shares by the IRAs participating in the Investment Advisory Program. In addition, BISYS performed various administrative, accounting, and recordkeeping functions on behalf of Keystone. In this capacity, BISYS, through Corelink, held Fund shares on behalf of IRAs participating in the Investment Advisory Program and served as sub-custodian for IRAs utilizing the Program under a custodial services agreement with KeyTrust. Further, BISYS served as distributor, Fund accountant, transfer agent, and administrator or co-administrator for the Affiliated Funds.[3]

(f) *GGA,* a wholly-owned subsidiary of KFI, served as the investment adviser to the Affiliated Funds. In addition, GGA and BISYS served as co-administrators for the Affiliated Funds.

(g) *The IRAs* participating in the Investment Advisory Program included self-directed IRAs which are described in section 408(a) of the Code and which are not ''employee benefit plans'' covered under Title I of the Act. All IRA holders were outside clients of Keystone and its affiliates rather than employees of these entities. The IRAs did not include any IRAs sponsored by Keystone and/or its affiliates nor did they include IRAs held by employees of Keystone and/or its affiliates in their individual capacities.

Description of the Funds

2. The Affiliated Funds participating in the Investment Advisory Program consisted of a group of Fund Portfolios referred to as ''Governor Funds.'' Originally, the Affiliated Funds included the following Fund Portfolios of ''The Sessions Group'': the KeyPremier Prime Money Market Fund, the KeyPremier Intermediate Term Income Fund, the KeyPremier Established Growth Fund and the KeyPremier Aggressive Growth Fund.

The Sessions Group was an open-end management investment company registered under the Investment Company Act of 1940 (the Investment Company Act), for which Martindale served as the investment adviser. The Sessions Group was also an Ohio business trust that offered shares in 19 separate series. Each series of shares constituted a different Portfolio, only 4 of which were offered to investors under the Investment Advisory Program. The Sessions Group was designed to provide a convenient means of investing in separate Portfolios that were professionally managed by Martindale. Shares in The Sessions Group were offered to trust customers of KeyTrust, other banking subsidiaries of Keystone, and the general public. Although some Portfolios required investors to pay load charges, all Fund Portfolios were offered to IRA investors at no load.

3. Pursuant to an advisory agreement, Martindale served as the investment adviser to the Affiliated Funds comprising The Sessions Group from October 3, 1997 until February 1, 1999. Martindale's investment advisory agreement had been approved by the Board of Trustees (the Trustees) for an initial period of up to two years and was required to be re-approved thereafter by the Trustees or the Portfolios' shareholders, at least annually.

Subject to the supervision and direction of the Trustees, Martindale managed the investment and reinvestment of the assets of each Portfolio of The Sessions Group and provided investment guidance and policy direction in connection with the objectives and policies of each such Portfolio. Although each Affiliated Fund Portfolio paid Martindale an Advisory Fee for services rendered, Martindale agreed to waive a portion of such fee. The waiver continued throughout Martindale's tenure as investment adviser.

The Advisory Fees were computed daily and paid monthly at an annual rate based on a percentage of the value of the Portfolio's average daily net assets. Depending upon the Affiliated Fund Portfolio managed, the annualized Advisory Fees that were payable to Martindale are shown in the following table. The left-hand column of the table reflects the Advisory Fees that would have been paid to Martindale had the waiver been lifted while the right-hand column of the table shows the Advisory Fees that were actually paid to Martindale during the waiver.

Portfolio	Before waiver (percent)	After waiver (percent)
KeyPremier Prime Money Market Fund	0.40	0.20
KeyPremier Intermediate Term Income Fund	0.60	0.30
KeyPremier Established Growth Fund	0.75	0.40
KeyPremier Aggressive Growth Fund	1.00	0.50

4. Effective February 1, 1999, The Sessions Group was reorganized into ''Governor Funds,'' a Delaware business trust which then comprised the Affiliated Funds. Like The Sessions Group, Governor Funds constituted an open-end management investment company registered under the Investment Company Act where shares were offered to IRA investors, at no load. These Affiliated Funds were advised by GGA and consisted of the following 12 Portfolios: the Prime Money Market Fund, the U.S. Treasury Obligations Money Market Fund, the Established Growth Fund, the Aggressive Growth Fund, the Emerging Growth Fund, the International Equity Fund, the Intermediate Term Income Fund, the Limited Duration Government Securities Fund, the Pennsylvania Municipal Bond Fund, the Lifestyle Conservative Growth Fund, the Lifestyle Moderate Growth Fund, and the Lifestyle Growth Fund.

Under the Investment Company Act, Governor Funds, as the successor Affiliated Funds, continued the business of The Sessions Group. In this regard, amounts formerly invested in

[3] As discussed herein, Funds shares were sold to the IRAs at no load. Thus, the participating IRAs did not compensate Corelink, or for that matter, BISYS. Keystone represents that it does not know whether BISYS compensated Corelink for services rendered nor is it certain why BISYS executed trades through Corelink rather than performing this service directly.

The Sessions Group were reinvested in the corresponding Affiliated Fund Portfolios of Governor Funds.

5. As investment adviser to the Affiliated Funds, GGA also waived a portion of its Advisory Fees. The waiver remained in effect for the duration of the Investment Advisory Program. The following table shows the Advisory Fees that were payable to GGA. Such fees are expressed as a percentage of each Portfolio's net assets. The left-hand column of the table shows the Advisory Fees that would have been paid to GGA had the waiver been lifted while the right-hand column of the table shows the Advisory Fees that were actually paid to GGA during the waiver.

Portfolio	Before waiver (percent)	After waiver (percent)
Prime Money Market Fund	0.40	0.20
U.S. Treasury Obligations Money Market Fund	0.40	0.20
Established Growth Fund	0.75	0.60
Aggressive Growth Fund	1.00	0.70
Emerging Growth Fund	1.25	0.50
International Equity Fund	1.25	0.40
Intermediate Term Income Fund	0.60	0.30
Limited Duration Government Securities Fund	0.60	0.30
Pennsylvania Municipal Bond Fund	0.60	0.30
Lifestyle Conservative Growth Fund	0.25	0.15
Lifestyle Moderate Growth Fund	0.25	0.15
Lifestyle Growth Fund	0.25	0.15

Martindale served as sub-adviser to each of the Affiliated Funds, except the International Equity Fund. For sub-advisory services rendered, Martindale was paid an annualized sub-advisory fee by the Affiliated Funds, as a percentage of each Portfolio's net assets. Martindale's sub-advisory fees, which were paid out of GGA's Advisory Fees, are presented as follows:

Portfolio	Sub-advisory fee (percent)
Prime Money Market Fund	0.10
U.S. Treasury Obligations Money Market Fund	0.20
Established Growth Fund	0.40
Aggressive Growth Fund	0.50
Emerging Growth Fund	0.50
Intermediate Term Income Fund	0.30
Limited Duration Government Securities Fund	0.30
Pennsylvania Municipal Bond Fund	0.30
Lifestyle Conservative Growth Fund	0.05
Lifestyle Moderate Growth Fund	0.05
Lifestyle Growth Fund	0.05

In addition, GGA and BISYS served as co-administrators for the Affiliated Funds. The maximum annualized fee payable to each entity under their Management and Co-Administration Agreement was 0.15 percent of the average daily net assets of the Prime Money Market Fund, the Pennsylvania Municipal Bond Fund, the Established Growth Fund, the Intermediate Term Income Fund, the Aggressive Growth Fund, the U.S. Treasury Obligations Money Market Fund, the Limited Duration Government Securities Fund, the Emerging Growth Fund and the International Equity Fund. Because GGA and BISYS waived a portion of their Administrative Fees, the aggregate annualized fee paid to each co-administrator was reduced to 0.115 percent.

6. Overall responsibility for management and supervision of the Affiliated Funds was vested in five Trustees, three of whom were unrelated to Keystone and its affiliates. The Trustees approved all significant agreements involving the Affiliated Funds and the persons and companies that furnished services to such Funds. A Trustee could be removed by either (a) a two-thirds vote of the Trustees or (b) by a vote of shareholders owning at least two-thirds of the outstanding shares of all series of the Affiliated Funds. If a Trustee was an officer or a director of Keystone, a sub-adviser, Martindale, GGA, or BISYS, it was precluded from receiving compensation from The Affiliated Funds.

Each Affiliated Fund Portfolio was required to bear its own expenses. These expenses included all fees and other costs not specifically waived and/or borne by the Affiliated Funds' service providers.

7. The Third Party Funds were open-end, diversified investment companies registered under the Investment Company Act whose sponsors, administrators, distributors, investment advisers, and sub-advisers were not affiliated with Keystone or its affiliates. The Third Party Funds were made available by Keystone to the IRAs, at no load, in the event the Affiliated Funds failed to offer a Portfolio in a particular Asset Class.

IRA investors participating in the Investment Advisory Program were offered two Third Party Funds. These Funds were The Putnam Fund for Growth and Income and The T. Rowe Price International Stock Fund.

For distribution-related services that were rendered to the Third Party Funds, Keystone and its affiliates received Rule 12b–1 Fees that were paid by the respective Third Party Funds to their distributors. The Rule 12b–1 Fees were in the form of trailing commissions and did not exceed 0.25 percent of the assets invested in each Third Party Fund Portfolio.

Description of the Investment Advisory Program/Request for Exemptive Relief

8. The Investment Advisory Program was an asset allocation program that was offered by Keystone to IRA participants between October 3, 1997 and June 30, 2000. Formerly known as the ''KeyPremier Nautilus Series Program'' but later referred to as the ''Nautilus Program,'' the Investment Advisory Program was designed to provide small- and medium-sized investors with access to the type of investment advice typically available only to larger investors. The Investment Advisory Program offered IRA investors the following features: (a) A unified Account statement covering all investments; (b) automatic allocation of assets and contributions; (c) a single asset allocation fee; and (d) no sales charges on purchases, redemptions, or transfers between investments. The minimum investment required for an Independent Fiduciary to establish an Account under the Investment Advisory Program was $25,000.

Effective June 30, 2000, Keystone discontinued the Investment Advisory Program. Currently, it is providing asset allocation services under a separate program which does not involve investment in any Affiliated Funds or Third Party Funds from which it will receive fees. However, for the interim period between October 3, 1997 and June 30, 2000, Keystone and the other parties to the transactions have requested an administrative exemption from the Department in order to provide retroactive relief for any prohibited transactions that may have arisen during the operation of the Investment Advisory Program.

If granted, the proposed exemption would be effective from October 3, 1997 until June 30, 2000. The proposed exemption would permit the purchase

or redemption, by an IRA, of shares of certain Affiliated Fund and the Third Party Fund Portfolios, in connection with the IRA's participation in the Investment Advisory Program. In addition, the proposed exemption would permit Keystone's provision of asset allocation and related services to an IRA's Independent Fiduciary, which resulted in such Independent Fiduciary's selection of Portfolios in the Investment Advisory Program for the investment of IRA assets, and the receipt of fees by Keystone and/or its affiliates.

Keystone believes that because it and Key Trust would be considered disqualified persons with respect to the IRAs participating in the Investment Advisory Program, the decision by an Independent Fiduciary to participate in such Program would be statutorily exempt under section 4975(d)(2) of the Code. However, Keystone notes that there is uncertainty regarding the availability of section 4975(d)(2) of the Code where the asset allocation recommendations provided to an Independent Fiduciary of an IRA under the Investment Advisory Program may cause such entities to be considered fiduciaries with respect to the IRAs. Therefore, Keystone has requested retroactive exemptive relief from the Department for the transactions described above.

Operation of the Investment Advisory Program

9. Before opening an Account in the Investment Advisory Program, Keystone provided each Independent Fiduciary with the following information: (a) A brochure describing the Investment Advisory Program; (b) an Account Agreement; (c) a description of the available Asset Allocation Models; and (d) a reference guide/disclosure document providing detailed information outlining the mechanics of the Investment Advisory Program, the fees charged under such Program, the procedures for establishing Accounts and making withdrawals and additions, and other related information. If an Independent Fiduciary wished to open an Account with Keystone, such Independent Fiduciary would complete an Account Agreement and answer a series of questions regarding investment objectives and risk tolerance. Answers to these questions were communicated to an investment adviser representative for Keystone (the Keystone Representative) either through a personal Interview, or by obtaining and completing a Questionnaire (which was in paper or electronic form).

Once completed, the Questionnaire was presented to the Keystone Representative. If answers were given through an Interview, the Keystone Representative would prepare a written report of the answers (*i.e.*, the Interview Report). Then, a copy of the Interview Report would be given to the Independent Fiduciary. The responses provided by the Independent Fiduciary during the Interview or on the Questionnaire were scored by the Keystone Representative to determine which of several Asset Allocation Models were the most appropriate, given the financial goals, objectives and risk tolerances previously identified by the Independent Fiduciary in the Interview or Questionnaire.

10. The Asset Allocation Models were designed to satisfy a variety of risk tolerances, investment horizons, and tax planning concerns. There were six Asset Allocation Models available to the IRAs under the Investment Advisory Program. Each Asset Allocation Model consisted of an asset distribution among the Asset Classes.

The Asset Allocation Models were developed and maintained by an investment committee (the Allocation Committee) consisting of investment professionals of the Asset Management Division of KFI.

In constructing the Asset Allocation Models, the Allocation Committee utilized Encorr Software which had been developed by Ibbotson Associates, an unrelated party, to determine the optimal allocations for various risk/return tolerances among five general Asset Classes based on historical risk and return. The Allocation Committee then divided one of these Asset Classes (*e.g.*, Large Cap) into two asset sub-classes (*e.g.*, Large Cap and Large Cap Growth) on the basis of historical risk and return data as shown below in Table I.

TABLE I.—SAMPLE ASSET ALLOCATION MODEL

Asset class	Fund type	Portfolio	Percentage
Money Market	Affiliated	Prime Money Market Fund	6
Fixed Income	Affiliated	Intermediate Term Income Fund	76
Large Cap Growth	Affiliated	Established Growth Fund	8
Large Cap Value	Third Party	Putnam Fund for Growth and Income	10
Total			100

11. The Allocation Committee could make adjustments to the Asset Allocation Models to take into consideration the investment goals and risk tolerances represented by such Models, and to account for changes in the economy and market conditions. These adjustments could include changing the investment mix of the Asset Allocation Models by modifying the proportion of assets invested in each Asset Class. In no event could Keystone change the asset mix of an Asset Allocation Model without first notifying the Independent Fiduciary in writing of the proposed change and giving such Independent Fiduciary at least 30 days within which to elect not to have the change made. However, if the Independent Fiduciary did not elect otherwise, Keystone was authorized to make the change.

12. The Retail Investment Product Committee of KFI (the Review Committee) was responsible for selecting the Portfolios used to satisfy the asset allocations specified by the Allocation Committee for each Asset Allocation Model. The Review Committee was composed of KFI officers with substantial portfolio management, investment and regulatory compliance experience. These officers also served on the Allocation Committee.

The Review Committee selected Portfolios of the Affiliated Funds for investment to the extent that the Affiliated Funds offered a Portfolio in a particular Asset Class. If no Affiliated Fund offered the requisite Portfolio, the Review Committee selected Portfolios of the Third Party Funds for investment. Any changes in the Portfolios on the part of Keystone in order to satisfy investment in a particular Asset Class were only made after Keystone had provided written notice to all affected

Independent Fiduciaries. In addition, these changes would only be implemented if the Independent Fiduciaries did not elect otherwise within 30 days of such notification.

13. Based on the results generated from the Interview or Questionnaire, a Keystone Representative recommended to the Independent Fiduciary an Asset Allocation Model, together with the corresponding initial investment mix of Portfolios that comprise the Asset Allocation Model. The asset allocation services provided by the Keystone Representative were of an advisory nature and were not binding upon the Independent Fiduciary. No action was taken on the initial recommendation unless and until the Independent Fiduciary accepted and approved, in writing, the Asset Allocation Model and corresponding investment mix recommended by the Keystone Representative. The Independent Fiduciary could add or withdraw IRA assets to or from the Account at any time (subject to any applicable minimum redemption and purchase requirement). Further, the Independent Fiduciary could also choose a different Asset Allocation Model by submitting a new Questionnaire or by means of a new Interview if the investment needs and goals of the Independent Fiduciary had changed.

Rebalancing of IRA Accounts

14. Keystone invested the Account in the Affiliated Funds and/or Third Party Funds that the Allocation Committee had previously chosen to satisfy the allocation called for by the Asset Allocation Model.[4] However, it was anticipated that over time, disproportionate earnings as between asset types would cause an Account's investment mix to drift out of balance with the Asset Allocation Model originally chosen by the Independent Fiduciary. For example, if the chosen Asset Allocation Model called for 50 percent of an Account's assets to be invested in the Fixed Income Class through the Intermediate Term Income Fund, and 50 percent in cash through the Prime Money Market Fund, and if the Intermediate Term Income Fund performed better than the Money Market Fund during a particular period of time, more than 50 percent of the Account's assets would be invested in the Fixed Income Class by the end of the period.

To correct this imbalance, Keystone would periodically move assets among the chosen investments by buying and selling shares of selected Portfolios from appropriate distributors on the second to the last business day of each calendar quarter. For purposes of rebalancing, Keystone used the net asset values of the affected Funds as of the close of business for the preceding trading day.[5] Keystone had no discretion as to the timing or amount of the rebalancing.

In the case of the foregoing example, Keystone would sell shares of the Intermediate Term Income Fund and invest the proceeds in the Prime Money Market Fund so that the Account would again be 50 percent invested in Fixed Income Securities and 50 percent in cash. Rebalancing would be conducted on a quarterly basis and confined to bringing the Account into balance with the Asset Allocation Model chosen by the Independent Fiduciary. Moreover, rebalancing would only occur if the percentage of assets invested in a particular Portfolio varied from the Asset Allocation Model by more than a predetermined threshold set forth in the Account Agreement.[6] As stated above, Keystone used the net asset values of the Affiliated Funds as of the close of business on the preceding trading day.

Reallocation of IRA Accounts

15. Keystone represents that from time to time, it was authorized to make changes to the asset mix of the Asset Allocation Models, as well as to the mix and identity of Affiliated Fund and/or Third Party Fund Portfolios that satisfied the Asset Allocation Models. However, Keystone states that it never utilized the reallocation method during the time period the Investment Advisory Program was in effect. Had Keystone decided to implement the reallocation mechanism, it would have been required to inform each affected Independent Fiduciary in advance and in writing of the proposed change. In addition, Keystone would have been required to provide each Independent Fiduciary with the opportunity to elect not to permit such change.[7] If the Independent Fiduciary took no action, Keystone would have been authorized to realign each Account on a quarterly basis to make the Account's investment mix match the new investment mix of the Asset Allocation Model selected by the Independent Fiduciary.

Disclosures

16. Aside from the Questionnaire and Interview Report described above, in order for an IRA to participate in the Investment Advisory Program, Keystone provided an Independent Fiduciary with the following materials and oral disclosures:

- A brochure describing the Investment Advisory Program; an Account Agreement; a description of the Asset Allocation Models; and a reference guide/disclosure statement providing details about the Investment Advisory Program, the fees charged thereunder, the procedures for establishing, making additions to and withdrawing from Accounts, and other related information.
- Copies of applicable Prospectuses for the Portfolios discussing the investment objectives of the Portfolios, the policies employed to achieve these objectives, and the corporate affiliation existing between Keystone and its affiliates, the compensation paid to such entities, disclosures relating to rebalancing and reallocating Asset Allocation Models (even though the reallocation service was never implemented), and information explaining the risks attendant to investing in the Portfolios.
- Upon written or oral request to Keystone, a Statement of Additional Information supplementing the Prospectuses, which described the type of securities and other instruments in which the Portfolios may invest and the investment policies and strategies that the Portfolios may utilize, including a description of the risks.
- A copy of the Account Agreement between the IRA and Keystone relating to the IRA's participation in the Investment Advisory Program.
- A written recommendation of a specific Asset Allocation Model, together with a copy of the Questionnaire and response, or the Interview Report.

If accepted as an investor in the Investment Advisory Program, the Independent Fiduciary was required to

[4] The Independent Fiduciary could specifically instruct Keystone not to invest in a specific Portfolio, in which case any IRA assets invested in that Portfolio would be reinvested within five business days in another Portfolio selected by Keystone and specifically approved by the Independent Fiduciary. A fee was charged for each such special instruction.

[5] Neither Keystone nor any of its affiliates received a commission from such purchases and sales.

[6] In other words, an Account would be rebalanced if the transactions requiring rebalancing had a ''material effect'' on the allocation. To have a material effect on an allocation of an Account, at least one transaction required to rebalance the Account had to be greater than $250 and at least one transaction had to change the value of the Fund Portfolio by more than 5 percent (*i.e.*, the percentage of an IRA's assets invested in a Portfolio compared to the percentage called for in the Asset Allocation Model selected for the IRA). However, Keystone reserved the right to rebalance an Account even if the required minimums were not satisfied.

For example, if under the Asset Allocation Model, 35 percent of an IRA's assets were invested in the Established Growth Fund, then rebalancing would occur if the percentage actually invested in the Established Growth Fund increased above 40 percent or decreased below 30 percent (but only if the dollar amount of the rebalancing transaction would exceed $250).

[7] For reallocations occurring after March 24, 2000, Keystone would have been required to include a Termination Form with the notice. See Representation 21. However, as stated above, Keystone never implemented the reallocation mechanism even though this change was communicated to IRA investors in the Termination Form.

acknowledge in writing to Keystone, prior to investing through such Program, that such Independent Fiduciary had received copies of the aforementioned documents. In addition, the Independent Fiduciary was required to represent to Keystone that such individual was (a) independent of Keystone and its affiliates; (b) knowledgeable with respect to the IRA in administrative matters and funding matters related thereto; and (c) able to make an informed decision concerning participation in the Investment Advisory Program.

17. In addition, on an ongoing basis, Keystone was required to provide each Independent Fiduciary with the following oral or written disclosures:

- Written confirmations of each purchase and redemption of shares of a Portfolio (including transactions resulting from the realignment of assets caused by a change in the Asset Allocation Model's investment mix and from periodic rebalancing of Account assets).
- Telephone quotations of Account balances.
- A periodic, but not less frequently than quarterly, Statement of Account specifying the net asset value of the IRA's assets invested in such Account, a summary of purchase, sale and exchange activity and dividends received or reinvested, a summary of cumulative realized gains or losses, and a statement of the fees paid to Keystone and its affiliates.
- Semiannual and annual reports that included financial statements for the Portfolios.
- A quarterly report pertaining to the applicable Asset Allocation Model describing such Asset Allocation Model's performance during the preceding quarter, market conditions and economic outlook and, if applicable, prospective changes in Portfolio allocations for the Asset Allocation Model, and the reasons therefor.
- At least annually, a written or oral inquiry from Keystone to ascertain whether the information provided in the Questionnaire or Interview Report was still accurate, and to determine whether such information should be updated.
- At least annually, a Termination Form.

Fee Structure

18. As to each investing IRA, the total fees paid to Keystone and its affiliates constituted not more than reasonable compensation for the services provided within the meaning of section 4975(d)(2) of the Code. Keystone charged each participating IRA an annual investment fee (the Outside Fee) at rates set forth in the Account Agreement. For example, if the average daily value of the Account—

- Exceeded $149,999, the Outside Fee charged was 1.30 percent; or
- Was less than $150,000, the Outside Fee charged was 1.55 percent.

The Outside Fee was computed quarterly on the average daily value of the assets in an IRA's Account during the quarter and was deducted directly from the Account (or paid directly by the Independent Fiduciary), also on a quarterly basis.

Although Keystone was authorized to increase the Outside Fee periodically, it never implemented this change. Assuming the Outside Fee had been increased, Keystone would have been required to notify the Independent Fiduciaries of all IRAs participating in the Investment Advisory Program, in writing, at least 30 days prior to the effective date of a such fee increase. The Independent Fiduciary would have been permitted to withdraw from the Investment Advisory Program at will and without penalty, and the fee increase would only have gone into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

As stated above, each investing IRA did not pay any sales loads on the purchase of Portfolio shares through the Investment Advisory Program. The Accounts were invested only in Portfolios which charged no front- end or back-end sales charges or for which the sales charges had been waived.

As discussed in Representation 3, Martindale received Advisory Fees from the Affiliated Funds. These annualized fees were paid at the Fund Portfolio-level and were based on a percentage of the assets held by such Portfolio, of between 0.20 percent and 0.50 percent. Similarly, GGA received annualized Advisory Fees of between 0.15 percent and 0.70 percent and Martindale received sub-advisory fees ranging from 0.05 percent to 0.50 percent.

In addition to the Advisory Fees, GGA and BISYS received Administrative Fees from the Affiliated Funds of 0.115 percent.

Further, Keystone and its affiliates received Rule 12b–1 Fees from certain Third Party Fund distributors with respect to IRA assets invested in the Third Party Funds through the Investment Advisory Program. The Rule 12b–1 Fees were in the form of trailing commissions of up to 0.25 percent per annum of the net asset value of each Third Party Fund.

Besides the aforementioned fees, each Portfolio incurred certain expenses. These expenses included charges for legal and accounting services, printing costs, registration fees, regulatory compliance costs, costs associated with maintaining the Fund's legal existence, and shareholder communication costs.

19. Keystone represents that with respect to each Account, it offset, quarterly, against the Outside Fee it received, (a) all Advisory Fees (including sub-advisory fees that were paid to third party sub-advisers), (b) all Administrative Fees GGA and BISYS received from the Affiliated Funds, and (c) all Rule 12b–1 Fees that were paid to Keystone and its affiliates by the respective Third Party Funds. Thus, the sum of the offset and the net Outside Fee would always equal the aggregate Outside Fee and the selection of Affiliated Funds or Third Party Funds would always be revenue-neutral. Moreover, Keystone believed this method of offsetting of all Fund-level fees would eliminate any conflicts of interest resulting from the investment of an Account's assets in certain Fund Portfolios that generated higher overall fees for Keystone and its affiliates.

At the end of each quarter, Keystone calculated the percentage of gross revenues that it and its affiliates earned during the quarter in the form of Advisory Fees (from the Affiliated Funds) or Rule 12b–1 Fees (from the Third Party Funds). These figures were calculated as a percentage of the average daily net value of assets in each Portfolio. The weighted average of such revenues (the Offset Percentage) were then calculated for each Asset Allocation Model as shown below in TABLE II. This yielded the amount of the Advisory Fees and Rule 12b–1 Fees that were earned by Keystone and its affiliates. Such fees were expressed as a percentage of the average daily net value of Account assets. Because the Outside Fee was also calculated as a percentage of the average daily net value of Account assets, Keystone reduced the Outside Fee for the quarter for each IRA by subtracting from the Outside Fee, the Offset Percentage for the Asset Allocation Model in which the IRA's assets had been invested during the quarter. Only after the Offset Percentage had been subtracted would Keystone deduct the Outside Fee from the IRA's Account.

TABLE II.—EXAMPLE OF OUTSIDE FEE OFFSET BASED ON AN ACCOUNT WITH AN AVERAGE DAILY VALUE OF $150,000 OR MORE

[All percentages annualized]

Fund type	Asset class	Total revenues (percentage)		Percentage of assets allocated to fund		Weighted fee percentage
Affiliated Fund	Fixed Income	0.60	×	35.00	....	21.00
Affiliated Fund	Money Market	0.40	×	30.00	....	12.00
Third Party Fund	International Equity	0.20	×	35.00	....	7.00
Total			....	100	....	40.00
Outside Fee:			....	1.30	....	
Weighted Average of Keystone Revenues (40 ÷ 100):			....	0.40	....	
Net Account Fee (Annual) Would be Calculated Quarterly.			....	0.90	....	

20. Like the Affiliated Funds, the Third Party Funds also incurred expenses for shareholder services, custody, the costs of regulatory compliance, legal fees, and shareholder communication costs, as well as the management and service fees imposed by investment advisers and service providers unaffiliated with Keystone or its affiliates. As for both the Affiliated and the Third Party Funds, these Fund-level expenses were not offset against Keystone's Outside Fee.

Termination Form

21. An Independent Fiduciary had the ability to withdraw from the Investment Advisory Program at any time, provided such fiduciary gave proper notice to Keystone. In addition, Keystone was authorized to provide 30 days' advance written notice to the Independent Fiduciary if it wished to change the asset mix of an Account outside of an Asset Allocation Model, divide an Asset Class, replace a Third Party Fund with an Affiliated Fund or vice versa, or increase its Outside Fee. The written notice was required to (a) state that the Independent Fiduciary could terminate the IRA's participation in the Investment Advisory Program at will and without penalty, upon receipt by Keystone of written notice from the Independent Fiduciary; and (b) explain that any of the changes noted above would go into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

However, under either circumstance, there was no formalized structure in place whereby Keystone could inform an Independent Fiduciary of his or her right to withdraw from the Investment Advisory Program on a more frequent basis or to document the Independent Fiduciary's withdrawal decision. Therefore, on March 24, 1999, Keystone began distributing the Termination Form to each Independent Fiduciary participating in the Investment Advisory Program. Although distribution of such form would be required thereafter, at least annually (*i.e.*, during the first calendar quarter of each year), it was considered mandatory in all cases where Keystone wished to make the changes noted above.

The Termination Form was to be accompanied by instructions on its use. The instructions, which contained information similar to the contents of Keystone's formerly-disseminated notice, provided that (a) the authorization was terminable at any time and without penalty, either by completing and returning the Termination Form or by sending other written notice to Keystone; and (b) no purchases and sales under the Account Agreement would be executed after the next business day following Keystone's receipt of the Termination Form or other written withdrawal notice. Assuming Keystone proposed to modify an asset mix or raise its Outside Fee, the Termination Form would also have stated that the change would only go into effect if the Independent Fiduciary did not elect to withdraw by the effective date.

Keystone represents that it never replaced an Affiliated Fund with a Third Party Fund Portfolio or vice versa, nor did it otherwise make an additional Third Party Fund Portfolio available for investment under the Investment Advisory Program, change an asset mix outside of an Asset Allocation Model or increase its Outside Fee. Therefore, there were no special circumstances to warrant an earlier distribution of such form. Moreover, because of the contemplated termination of the Investment Advisory Program on June 30, 2000, Keystone made no further annual distribution of the Termination Form to Independent Fiduciaries.

22. It is represented that the transactions satisfied the statutory criteria for an exemption under section 4975(c)(2) of the Code because:

(a) The investment of an IRA's assets under the Investment Advisory Program was made by a fiduciary that was independent of Keystone and its affiliates and such Independent Fiduciary maintained complete discretion with respect to the IRA's continued participation in the Investment Advisory Program.

(b) No IRA paid a fee or commission by reason of the acquisition or redemption of shares of Fund Portfolios.

(c) As to each IRA, the total fees that were paid to Keystone and its affiliates constituted no more than reasonable compensation for the services provided.

(d) Prior to investing under the Investment Advisory Program, each Independent Fiduciary received offering materials and disclosures from Keystone which set forth all material facts concerning the purpose, fee structure, rebate arrangement, operation, rebalancing, risks and participation in such Program.

(e) Keystone provided written documentation to an Independent Fiduciary of its recommendations based upon objective criteria that were uniformly applied.

(f) The quarterly Outside Fee that was paid by an IRA to Keystone for asset allocation and related services rendered to such IRA under the Investment Advisory Program was offset by—(1) all gross Advisory Fees received by Keystone and/or its affiliates from the Affiliated Funds, including sub-advisory fees that are paid to third party sub-advisers; (2) all Administrative Fees received by GGA and BISYS from the Affiliated Funds; and (3) all Rule 12b-1 Fees that were paid by the Third Party Funds to Keystone and/or its affiliates, such that the sum of the Outside Fee

and the Offset Fees equaled the total Outside Fee, and the selection of Affiliated or Third Party Fund Portfolios was revenue-neutral.

(g) Although Keystone had discretion to make unilateral Model Adjustments to an IRA's Asset Allocation Model, it was bound by the financial goals and risk tolerances that the Model represented and it was limited in the degree of change that it could make to an Asset Allocation Model's investment mix.

(h) In rebalancing an IRA investor's Account, neither Keystone nor its affiliates exercised discretionary management or control over the IRA.

(i) Although the Independent Fiduciary could withdraw from the Investment Advisory Program at any time, any authorizations made by such IRA investors with respect to increases in the Outside Fee, Model Adjustments that were outside of an Asset Allocation Model, the addition or substitution of a Fund, would be terminable at will and without penalty to the IRA, upon receipt by Keystone of a Termination Form from such IRA investor which would advise the Independent Fiduciary (1) of his or her right to withdraw from the Investment Advisory Program and (2) that absent affirmative approval, the change would be effective as of a given date.

(j) Each Independent Fiduciary received disclosures from Keystone regarding the participation of the IRA in the Investment Advisory Program.

(k) All dealings between an IRA, the Funds and Keystone remained on a basis which was at least as favorable to the IRA as such dealings are with other shareholders of the Funds holding the same classes of shares as the IRA.

Notice to Interested Persons

Keystone will provide notice of the proposed exemption to Independent Fiduciaries of IRAs formerly investing in the Investment Advisory Program within 30 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided by first-class mail and will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Therefore, comments and requests for a hearing must be received by the Department no later than 60 days from the date of the publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Reagent Chemical & Research, Inc. Employees Profit Sharing Plan and Trust (the Plan) Located in Middlesex, New Jersey

[Application No. D–10793]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a certain residential lot (the Property) by the Plan to Mr. Brian Skeuse and Mrs. Jan Skeuse (the Skeuses), parties in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) the sale is a one-time cash transaction;

(b) the Plan receives the greater of either: (i) $105,000; or (ii) the current fair market value for Property established at the time of the sale by an independent qualified appraiser; and

(c) the Plan pays no commissions or other expenses associated with the sale.

Summary of Facts and Representations

1. The Plan was adopted on December 12, 1962. The Plan is a defined contribution plan with approximately 309 participants. As of July 22, 1999, the Plan had approximately $30,438,854 in total assets. Reagent Chemical & Research, Inc. (RCR) is the sponsor of the Plan. RCR is a subchapter ''S'' corporation organized under the laws of State of Delaware. RCR is in the business of manufacture, distribution and sale of specialty chemicals. The Plan's current trustees are John T. Skeuse, brother of Brian Skeuse, and Stephen T. Finney, brother-in-law of Brian Skeuse.

2. On November 3, 1980, the Plan purchased approximately 34.58 acres of land (the Land) from Joe and Wenona Russo, unrelated third parties, for $225,000.[8] The Property is a 2.5 acre parcel of the Land. Therefore, the applicant represents that the cost of the Property to the Plan, based on the per acre price paid for the Land, was $16,304.35. The Property is adjacent to the Skeuses' personal family residence. It is represented that the decision to purchase the Property as a investment for the Plan was made by Robert Dallas and Thomas Skeuse, Sr., who were the Plan's trustees at the time of the transaction.[9]

The Property is held in the Plan's aggregate portfolio and has not been allocated to any participant's account in the Plan. At the time of the Plan's purchase in 1980, the Property represented less than 1% of the Plan's total assets. The applicant represents that as of November 27, 2000, the Property continued to represent less than 1% of the total value of the Plan's assets.

3. The applicant represents that the Property has not been used or leased by anyone, including the parties in interest described herein, since it was acquired by the Plan. Thus, the applicant states that the Property has not been an income-producing asset and has been held for possible appreciation.

The Plan has paid for taxes, insurance and maintenance on the Property since the acquisition (the Holding Costs). Specifically, the Plan has paid a total of approximately $34,870 in property taxes for the Property during this period. Further, the Plan has paid approximately $4,500 for the design and approval of a residential septic tank system for the Property. The applicant estimates that the insurance costs incurred by the Plan for the Property during the period from 1980 until 1999 were approximately $1,000. The applicant states that the Holding Costs for the Property have been approximately $40,370. Therefore, the total cost for the Property (*i.e,* the acquisition price of $16,304, plus the Holding Costs of approximately $40,370) was approximately $56,674 as of December 2000.

[8] The Plan sold approximately 10 acres of the Land in 1987 to Brian Skeuse, a party in interest, pursuant to the terms and conditions of Prohibited Transaction Exemption (PTE) 87–17, 52 FR 2630 (January 23, 1987). The Department is providing no opinion herein as to whether the conditions of PTE 87–17 were met.

[9] The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Land, including the Property, by the Plan violated any of the provisions of Part 4 of Title I of the Act.

However, the Department notes that an investigation regarding the subject investments made by the Plan and related transactions has been conducted by the Department's Regional Office in New York. In this regard, the proposed exemption, if granted, will enable the Plan to be made ''whole'' with regard to the total costs to the Plan for the Property and will allow the Plan to reinvest the proceeds of the proposed sale in other assets which may yield greater returns.

4. The Property is located on 30 Old Hill Road, Raritan Township, Hunterdon County, New Jersey. The Property was appraised on May 11, 1999, as having a fair market value of $95,000 (the Appraisal). The Appraisal was prepared by George A. Copeland, Jr., MAI (Mr. Copeland), who is an independent, qualified real estate appraiser in the State of New Jersey. Mr. Copeland is with Copeland Appraisal Associates, Inc., located at 971 U.S. Route 202 in Somerville, New Jersey. Mr. Copeland states that consideration was given in the Appraisal to three approaches to value, *i.e.,* the cost approach, sales comparison approach, and income approach. However, Mr. Copeland relied on the sales comparison approach to determine the fair market value of the Property.

Mr. Copeland also submitted several updates to the Appraisal of the Property. The first update is dated March 23, 2000 (Update I). Update I states that the fair market value of the Property was $100,000 as of March 23, 2000.

The second update to the Appraisal of the Property is dated November 20, 2000 (Update II). Update II states that the fair market value of the Property was $105,000, as of November 20, 2000.

Finally, the applicant also submitted a supplement to the Update II dated December 22, 2000 (the Supplement). Because the Property is adjacent to the Skeuses' personal family residence, Mr. Copeland considered whether a sale of the Property by the Plan to the Skeuses would merit a premium above the fair market value for the Property. However, in the Supplement, Mr. Copeland states that the Property would not merit a premium above its fair market value in any sale to an adjacent property owner.

5. The applicant now proposes that the Skeuses purchase the Property from the Plan in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the Plan. The Plan will pay no commissions or other expenses associated with the sale. The Skeuses will pay the Plan the greater of either: (a) $105,000; or (b) the current fair market value of the Property, as established by a qualified independent appraiser at the time of the transaction. In this regard, Mr. Copeland or another independent qualified appraiser will update the Appraisal to determine the current fair market value for the Property at the time of the proposed sale. The sale of the Property will enable the Plan to sell an illiquid non-income producing asset and reinvest the sale proceeds in assets that may yield higher returns.

6. In summary, the applicant represents that the transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) the Plan will receive the greater of either: (i) $105,000; or (ii) the current fair market value for the Property, as established at the time of the sale by an independent qualified appraiser;

(c) the Plan will pay no fees, commissions or other expenses associated with the sale; and

(d) the sale will enable the Plan to divest itself of a non-income producing asset and acquire investments which may yield higher returns.

Notice to Interested Persons

The applicant represents that notice of the proposed exemption (the Notice) will be distributed to interested persons, by first class mail, or by posting in RCR's facilities, within thirty (30) days of the date the Notice is published in the **Federal Register**. Such interested persons will include all participants in the Plan, all fiduciaries of the Plan, and any officer or director of RCR. The distribution to interested persons shall include a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform such persons of their right to comment and/or request a hearing with respect to the Notice.

Comments and requests for a public hearing with respect to the Notice are due sixty (60) days following the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Ibbotson Associates, Inc. (Ibbotson) Located in Chicago, Illinois

[Exemption Application No.: D–10897]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the provision of asset allocation services (the Service) by Ibbotson to Plan participants and the receipt of fees by Ibbotson from Service Providers in connection with the provision of such asset allocation services, provided that the following conditions are met.

I. General Conditions

A. The retention of Ibbotson to provide the Service will be expressly authorized in writing by an independent fiduciary of each Plan.

B. Ibbotson shall provide the independent fiduciary of each Plan with the following, in writing:

(1) Prior to authorization, a complete description of the Service and disclosures of all fees and expenses associated with the Service.

(2) Any other reasonably available information regarding the Service that the independent fiduciary requests.

(3) A contract for the provision of the Service which defines the relationship between Ibbotson, the Service Providers and the Plan sponsor, and the obligations thereunder. Such contract shall be accompanied by a termination form with instructions on the use of the form. The termination form must expressly state that a Plan may terminate its participation in the Service without penalty at any time. However, a Plan which terminates its participation in the Service before the expiration of the contract will pay its pro-rata share of the fees that it would otherwise owe for the Service under the contract and, if applicable, any direct costs actually incurred by Ibbotson which would have been recovered from the Plan but for the termination of the contract, including any direct setup expenses not previously recovered. Thereafter, the termination form shall be provided no less than annually.

(4) At least 45-days prior to the implementation of any material change to the Service or increase in fees or expenses charged for the Service, notification of the change and an explanation of the nature and the amount of the change in the Service or increase in fees or expenses.

(5) A copy of the proposed and final exemption, if granted, as published in the **Federal Register**.

(6) An annual report of Plan activity which summarizes the performance of the asset allocation categories provided to the Plan and provides a breakdown of all fees and expenses paid to Ibbotson in connection with the provision of the Service to the Plan for the year. Such report shall be provided no more than 45 days after the period to which it relates. Upon the independent fiduciary's or Plan sponsor's request,

such report may be provided more frequently.

C. Ibbotson will provide each Plan participant with the following:

(1) Written notice that the Service is available and provided by Ibbotson, an entity independent of the Service Provider and the Plan sponsor.

(2) Prior to using the Service, full written disclosures that will include information about Ibbotson and a description of the Service.

(3) Access to Ibbotson's web site or paper-based communications which will clearly indicate that the Plan participant is receiving the Service from Ibbotson, and that Ibbotson is independent of the Service Provider.

(4) A tolerance questionnaire which must be completed prior to utilization of the Service.

(5) An investment advisory service agreement under which the Plan participant will acknowledge his or her understanding that the Service is provided by Ibbotson and not the Service Provider. This agreement must be completed prior to utilization of the Service.

D. Any investment advice given to a Plan participant by Ibbotson under the Service will be based solely on the responses provided by the Plan participant through the Service's interactive computer program or through a paper or telephone interview and will be based on the application of an objective methodology developed by Ibbotson.

E. Any investment advice given to a Plan participant will be implemented only at the express direction of the Plan participant.

F. The total fees paid to Ibbotson and a Service Provider, in connection with the provision of the Service, by each Plan does not exceed ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

G. The only fees which are payable to Ibbotson in connection with the provision of the Service include, subject to negotiation, one or more of the following:

(1) An annual flat fee based on a fixed dollar amount per Plan participant for the Service. This fee may be paid by the Plan, Plan sponsor, Plan participant or the Service Provider.

(2) A technology licensing fee payable by the Service Provider in the first year that the Service is provided to a Plan. The fee will be a fixed dollar amount based on the number of Plan participants and beneficiaries contained on the Service Provider's record-keeping system. Each time the number of Plan participants and beneficiaries on the Service Provider's record-keeping system increases by at least 10%, an additional fixed dollar amount based on the increase in Plan participants and beneficiaries will be assessed and charged to the Service Provider for the new Plan participants and beneficiaries (the Revised Technology Fee).

(3) For subsequent years, Ibbotson will charge the Service Provider an annual technology maintenance fee equal to up to 20% of the technology licensing fee charged to the Service Provider in the first year plus up to 20% of the Revised Technology Fee.

(4) Ibbotson will charge the Plan or Plan sponsor an Internet customization fee where a Plan sponsor contracts directly with Ibbotson for the provision of the Service. This flat fee will be based on the time spent by Ibbotson personnel on its customization of the Service for the particular Plan.

(5) For those Plan sponsors electing to receive a Plan analysis report, an annual flat fee based on a fixed dollar amount per Plan investment analysis report. This fee will be paid by the Plan sponsor or Service Provider.

H. No portion of any fee or other consideration payable by the Plan or the Plan sponsor to Ibbotson in connection with the Service will be received or shared with a Service Provider.

I. Neither the fees charged nor the compensation received by Ibbotson will be affected by the investment selections or the decisions made by the Plan participants and beneficiaries regarding investments of the assets in their accounts.

J. Each Service Provider shall represent to Ibbotson that it will not impose any additional fees and/or charges (relating to the investment products made available to Plans) on Plans who contract for the Service unless such fees and charges are imposed on the Service Provider's similarly situated clients who do not contract for the Service.

K. Ibbotson will maintain insurance coverage from an insurer with a rating in one of the three highest generic categories by at least one nationally recognized statistical rating service, in the amount of at least $5 million for the payment of any liabilities that may arise with respect to the Service by reason of a breach of fiduciary duty described in section 404 of the Act or a violation of the prohibitions of section 406 of the Act or section 4975 of the Code. Such insurance coverage will be provided under a ''claims made'' policy. In the event that Ibbotson changes insurers or ceases to provide the Service, Ibbotson will maintain ''trail coverage'' with respect claims made during the period in which the policy was in effect for a period of three years following such a change or cessation of the Service.

L. No Service Provider shall at any time own any interest, by vote or value in Ibbotson, and neither Ibbotson nor any affiliate shall own any interest, by vote or value, in a Service Provider.

M. The annual revenues derived by Ibbotson from any one Service Provider shall not constitute more than 5% of the annual revenues of Ibbotson.

N. Ibbotson will maintain for a period of six years, the records necessary to enable the persons described in paragraph (O) of this section to determine whether the conditions of the exemption are met, including records of the recommendations made to Plan participants and beneficiaries and their investment choices, except that—

1. A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Ibbotson, the records are lost or destroyed prior to the end of the six year period.

2. No party in interest, other than Ibbotson shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code if records are not maintained or not available for examination as required by this paragraph and paragraph O(1) below.

O. (1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of Section 504 of the Act, the records referred to paragraph (N) of this section are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission,

(b) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary,

(c) Any contributing employer to any participating Plan or any duly authorized representative of such employer, or an employee organization whose members are participants and beneficiaries of a participating Plan; or

(d) Any Plan participant or beneficiary of any participating Plan or any duly authorized representative of such Plan participant or beneficiary.

(2) None of the persons described in paragraph (1)(b)–(d) of this paragraph (O) shall be authorized to examine trade secrets of Ibbotson, or commercial or financial information which is privileged or confidential.

III. Definitions

A. The term ''Service'' means the asset allocation service provided by Ibbotson to Plans which is accessed through computer software and other written communications in order to provide personalized recommendations to Plan participants regarding the allocation of their investments among the options offered under their Plan.

B. The term ''Service Provider'' means an entity that has been in the financial services business for at least three years, and during such period, has not been convicted of a felony offense involving abuse or misuse of such entity's employee benefit plan position or employment, or any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary. Such entity is also described in one of the following categories:

1. A bank, savings and loan association, insurance company or registered investment adviser which meets the definition of a ''qualified professional asset manager'' (QPAM) set forth in section V(a) of Prohibited Transaction Exemption 84–14 (49 Fed. Reg. 9494 (Mar. 13, 1984)), as corrected at 50 Fed. Reg. 41430 (Oct. 10, 1985) and in addition, has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount not less than $250 million; or

2. A broker dealer registered under the Securities Exchange Act of 1934, which has, as of the last day of its most recent fiscal year, $1 million in shareholders' or partners' equity, and total client assets under management and control in an amount not less than $250 million.

C. The term ''independent fiduciary'' means a Plan fiduciary which is independent of Ibbotson and its affiliates and independent of the Service Provider and its affiliates.

D. The term ''affiliate'' includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, relative of, or partner in any such person; and

(3) Any corporation or partnership, of which such person is an officer, director or partner.

E. The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

F. The term ''Plan'' means an employee benefit pension plan as defined in section 3(2) of the Act.

Summary of Facts and Representations

1. Ibbotson, founded by Professor Roger Ibbotson in 1976, provides products and services to help investment professionals make asset allocation decisions for their clients. Ibbotson's mission is to help its clients gather, manage and retain assets. Its clients include financial planners, brokers, brokerage firms, mutual fund companies, institutional and small money managers, pension funds, 401(k) providers, banks and private bankers and insurance companies. In its application, Ibbotson states that Professor Ibbotson's study, Stocks, Bonds, Bills and Inflation, has become an indispensable annual reference tool for investment and financial professionals.

2. The Applicant represents that the Service will be beneficial to Plan participants because it will provide Plan participants with guidance involving analytical techniques and financial concepts that typically result in a more focused and well thought out program for Plan investments. The Applicant further states that the Service, thereby, allows Plan participants to more fully exercise their rights to self-direct their investments. The Service integrates retirement planning and fund allocation recommendations, including current Plan savings, other retirement savings, personal retirement income goals and tolerance for risk, time horizon to retirement and the fund choices specifically available in a participant's Plan. According to Ibbotson, these factors can be the most crucial in developing an effective individual retirement plan.

The Applicant further indicates that the individual guidance which is provided by the Service is not typically available due to the hesitancy of Plan sponsors and Service Providers to provide such advice out of concern for potential liability, and the high cost of obtaining this type of advice on an individual basis. Ibbotson believes that the advice provided by the Service is similar to that used by professional investment managers for the allocation of assets in a defined benefit plan.

3. Before a Plan's independent fiduciary may authorize the Plan's participation in the Service, Ibbotson must provide the independent fiduciary with a complete description of the Service, written disclosures of all fees and expenses associated with the Service, and a written contract for the provision of the Service which defines the relationship between Ibbotson, the Service Provider and the Plan sponsor and the obligations thereunder.[10] Such contract will be renewable annually and will include: (a) A provision under which the Plan shall have 45 days notice prior to implementation of any material change to the Service or any fee or expense increases in connection with the provision of the Service by Ibbotson; and (b) a provision which states that a Plan may terminate its participation in the Service at any time without penalty. However, a Plan which terminates its participation in the Service before the expiration of the contract will be responsible for the payment of its pro-rata share of the fees owed under the contract as of the date of termination, and, if applicable, any direct costs actually incurred by Ibbotson which would have been recovered by Ibbotson but for the termination of the contract, including any direct setup expenses not previously recovered. In addition, Ibbotson shall provide the independent fiduciary with a copy of the proposed and the final exemption, if granted, as published in the **Federal Register**.

4. Ibbotson will provide the Service either directly to Plan participants through an agreement with the Plan sponsor or through an agreement with the Service Providers sponsoring the investment vehicles offered to Plan participants. In situations where Ibbotson contracts directly with the Plan Sponsor, Ibbotson will customize the Service for each Plan.[11] The fees

[10] In this regard, the Department notes that the fiduciary responsibility provisions of the Act apply to the decision of a Plan's independent fiduciary to authorize the Plan's participation in the Service. Section 404 of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the Plan's independent fiduciary must act prudently when deciding to participate in the Service, and in considering the fees associated with the Service. The Department expects that the Plan's independent fiduciary, prior to authorizing the Plan's participation in the Service, will understand fully the operation of the Service, and the compensation paid thereunder, following disclosure by Ibbotson of all relevant information pertaining to the Service.

[11] The provision of investment advisory services to plans would be exempt from the prohibitions of section 406(a) of ERISA if the conditions of section 408(b)(2) are met. Section 2550.408b–2(a) of the Department's regulations provides that section 408(b)(2) of the Act exempts from the prohibitions of section 406(a), payment by a Plan to a party in interest, including a fiduciary for * * * any service (or combination of services) if (1) such service is necessary for the establishment or operation of the Plan; (2) such * * * service is furnished under a contract or arrangement which is reasonable; and (3) no more than reasonable compensation is paid for such * * * service. The regulation also provides that section 408(b)(2) does not contain an exemption from acts described in a section 406(b) even if such act occurs in connection with a provision of services that is exempt under section

Continued

charged for the Service will be based on a flat fee per participant. In many instances, Ibbotson will need to coordinate with the Plan's record-keeper or another Service Provider in offering the Service to a Plan's participants. Such entities will be independent of Ibbotson. All fees for the Service will be paid by the Plan sponsor or the Plan to Ibbotson, and the Service Providers will not receive any portion of such fees or other consideration from Ibbotson.

In the second situation, Ibbotson will provide the Service to Plan participants pursuant to a contract that the Plan sponsor enters into with a Service Provider. In these instances, the fees for the Service will still be based on a flat dollar amount per Plan participant, but will be paid to Ibbotson by the Service Provider, the Plan or Plan participant. In addition, Ibbotson will enter into a written agreement with the Plan sponsor defining the relationship between the Plan sponsor, Ibbotson and the Service Provider.

5. The Applicant states that, once a Plan fiduciary has authorized its Plan's participation in the Service, Plan participants will receive written notice that the Service is available and provided by Ibbotson, an entity which is independent of the Service Provider. Each Plan participant will receive an investment advisory service agreement under which each participant will acknowledge his or her understanding that the Service is provided by Ibbotson and not the Service Provider. In addition, Plan participants will receive full disclosures about Ibbotson and the Service.

Access to the Service will be provided to Plan participants through the Internet, or by written materials. A Plan participant will answer a questionnaire which consists of multiple questions that are designed to evaluate a Plan participant's anticipated time horizon to retirement, savings rate and other personal financial factors. After the interview is completed, the Plan participant will receive recommendations with respect to his or her savings rate, retirement age and asset allocation[12] and the percentage of assets that the Plan participant should allocate to each option.

If a Plan participant elects to receive his/her advice through the Internet, the Plan participant will first access a website provided by the Service Provider or the Plan sponsor. There will be an electronic link from the Plan sponsor's or Service Provider's website to Ibbotson's website where the questionnaire and investment advice is housed. The Applicant represents that Ibbotson will always retain sole control over the content of the Service and the advice contained therein. Ibbotson will regularly monitor the contents of the Service and the advice contained therein to ensure that it remains the product of the objective methodology developed by Ibbotson. Ibbotson states that it will be apparent to the Plan participant that Ibbotson is the sole-provider of such advice.

For those Plan participants using the Internet, the completed questionnaire is scored by computer. For those Plan participants who select to receive his/her advice in paper form, Ibbotson will mail the Service materials to Plan sponsors or Plan participants after the Plan sponsor has decided to hire Ibbotson. The Plan participants will mail their written responses back to Ibbotson. Ibbotson will, in turn, score the questionnaire and send its recommendations, etc., directly back to the Plan participant. The Plan participant, will, if she or he chooses to implement the recommendations, then mail or telephone the instructions to the Service Provider (or other designated agent for receiving such investment instructions.) All recommendations will be generated by Ibbotson's proprietary forecasting engine based on an analysis of Plan participant's responses to the questionnaire and an analysis of the investment options offered under the relevant Plan, including any employer stock fund.[13] Based on the score, the Plan participant is categorized into one of several investment recommendations.[14]

Each recommendation contains a description of the investor profile associated with such recommendation that a Plan participant can review to see if he or she feels that he or she has been correctly classified. The Service will also allow Plan participants to experiment with different risk/return scenarios to better understand what impact the recommended allocation will likely have on his/her retirement.

6. The Applicant states that the advice provided to Plan participants will be based on the application of an objective methodology developed by Ibbotson. The investment recommendations generated by the Service are standardized. Such recommendations are generated through an automated process that is then applied to each Plan and Plan participant advised by Ibbotson. The advice provided to a Plan participant through the Service may only be implemented if it is expressly authorized in writing by the Plan participant. The Service will inform Plan participants periodically of the need to review their situation. Plan participants are advised that the investment advice is valid for one year and it is advisable to repeat the questionnaire process periodically and if there are significant life events (such as the birth of a child or an increase in salary.)

7. The Applicant represents that its role in performing the Service on behalf of a Plan, includes gathering information about the investment options offered in a particular Plan, and developing a recommended portfolio for each investor type. First, each Plan's investment option style is analyzed. Then, seven (or more) Plan-specific asset allocation recommendations (from lower to higher risk) are generated by using proprietary Ibbotson software. Finally, the allocations are electronically transferred to a web site ''server'' (computer system) where one of the asset allocations is recommended to a Plan participant, based on his/her inputs.

Ibbotson constructs portfolios with different risk and return characteristics using the investment options available under the Plan. These portfolios form the foundation of the advice which is provided to a Plan participant. This methodology can be broken into five steps.

Step 1: Selection of asset classes. Before creating specific portfolios for each investment option, Ibbotson believes that it is first necessary to construct strategic asset-class level portfolios. These strategic portfolios reflect the underlying asset allocations that Ibbotson would like to achieve

408(b)(2). Section 2550.408b–2(e)(1) further provides that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause the Plan to pay additional fees for a service furnished by such fiduciary or to pay a fee for a service furnished by a person in which the fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary. In general, whether a violation of section 406(b) occurs during the operation of an investment advisory program is an inherently factual matter. *See* Advisory Opinion 84–04 (January 4, 1984).

[12] The recommendation will describe and identify the specific investment options available through the participant's Plan and in which options the Plan participant should invest.

[13] The Service will not, however, make any recommendations will respect to investments in employer stock. Instead the Service will treat the participant-designated level of employer stock holdings as an investment in the particular asset class in which the stock falls (*i.e.,* large capitalized equity) with two times the volatility of that class and develop an overall recommendation with this assumption.

[14] These recommendation involve lower to high risk portfolios.

using the specific investment options available under the Plan. Asset classes used to create the strategic portfolios may include: Large, mid and small cap stocks, international stocks, emerging stocks, long, intermediate and short term government bonds, high-yield bonds, municipal bonds, cash, and company stock. The asset classes used depend on the number and types of investment options available in the 401(k) plan. Ibbotson requires that the investment options in a plan provide exposure to at least small and large stocks, cash, and bonds for advice to be given. If the exposure to each of these asset classes is not available, Ibbotson will not provide advice services.

Step 2: Develop expected returns. Ibbotson uses historical relationships and current yields on government bonds to generate expected returns. This approach separates the expected return of each asset class into three components. The first two components are a real risk-free rate of return and an estimate of future inflation. It is Ibbotson's belief that the current yield on a long-term, zero coupon government bond is the best estimate of these two components. The third component is the difference between the historical return on any asset class and the historical return on long-term, zero coupon government bonds. This difference represents the incremental return over the risk free rate investors have earned from taking on the risk of investing in an asset class. The sum of these components is the expected return Ibbotson uses in the mean-variance optimization process. Standard deviations and correlations for the asset classes are calculated using historical data.

Step 3: Build model portfolios. Ibbotson employs the standard mean-variance analysis from Modern Portfolio Theory to evaluate and determine its strategic, asset-level portfolio recommendations. However, rather than taking portfolios directly off of the efficient frontier defined by the estimates created in Step 2, Ibbotson chooses portfolios that are very close to the efficient frontier under many different economic and investment performance scenarios. Ibbotson believes that choosing portfolios this way ensures that the strategic portfolio characteristics will be relatively stable over time and will avoid drastic asset class shifts. Ibbotson deems that it is essential to build portfolios that have these stable properties to minimize the need for the Plan participant to make frequent changes to his or her portfolio.

Step 4: Select funds. Once asset-level model portfolios are developed, they are implemented using the investment options available under the plan. Since at any time most funds are investing in securities from several asset classes, Ibbotson employs a statistical method to determine what asset classes a fund's investment approach is exposing the Plan participant to. Using the asset exposures from this technique, Ibbotson combines the funds so that the total asset class exposure of the funds in the portfolio equals the desired strategic portfolio weights. Since consistency of asset exposure in funds through time is so important, investment options that have little or no history must provide sufficient additional information to base reasonable expectations on. A mutual fund's manager tenure and fees and expenses are also evaluated as part of this process.

Step 5: Monitor and re-balance. The portfolio choices must be reviewed regularly and rebalanced. Portfolio rebalancing is the process of moving a fund's asset class exposures toward its strategic target. This process seeks to reduce the relative performance risk associated with moving the asset class exposures away from what was intended in the strategic asset allocation. There are a variety of conditions that could cause a rebalancing of a portfolio. Market movements, fund asset exposure changes, removal and replacement of mutual funds can trigger rebalancing.

As part of this ongoing process, the funds are evaluated quarterly and the strategic asset allocations are updated once a year. A set of criteria, including absolute and relative performance, is used to evaluate the funds used in the advice portfolios. Funds that do not meet the criteria will be placed on a watch list. The placement of a fund on the watch list does not mean that the fund will be replaced, it is a trigger to begin further due diligence on the fund.

To be removed from the watch list, certain pre-established qualitative and quantitative measures must be met. After a fund has been placed on the watch list and further due diligence has determined that the fund no longer meets the objectives of one or more of the portfolios, Ibbotson will advise the plan sponsor to consider a suitable replacement. Any new fund entering the program will be studied and analyzed using the same methodology for initial fund selection outlined above.

8. Ibbotson next describes the steps involved in providing individualized advice to Plan participants. The steps start with forecasting many possible expected investment returns scenarios and the collecting of the Plan participant's individual needs and risks. These are then combined with the relevant tax and plan rules to show the Plan participant the risk of his or her current investment path and to calculate advice to optimize the 401(k) plan portfolio. Rather than using a questionnaire to approximate the risk tolerance level of the Plan participant, Ibbotson uses a simulation-based forecasting approach designed to show a Plan participant the risks of various investment decisions personalized to his or her individual circumstances. The advice generated recommends a portfolio risk level, a savings rate and a retirement age appropriate to that Plan participant's retirement income goals.

Step 1: Generate return and inflation data. Ibbotson's first step in this process is to generate hundreds of sets of asset return and inflation data covering the next 40 years. This data is randomly calculated using historical data and the relationships it has exhibited through time. This forecasting software uses this data to model the many possible wealth and income paths a Plan participant might face. By generating a variety of possible future wealth patterns, the Plan participant gets a better picture of not just the average path his or her wealth might take but also of shortfalls that are possible.

Holdings of individual stocks are modeled but company stock is modeled as a separate asset class included along with all of the asset classes in the system. If a Plan participant is required or chooses to hold company stock then that will be included in the solution; however, company stock is factored into the solution with the same return as the appropriate capitalization group asset class with twice the standard deviation.

All of this simulation data is updated annually along with the strategic asset allocation portfolios.

Step 2: Gather data from plan participant and record keeper. Ibbotson's forecasting process enables the Plan participant to input data to take into account all of the Plan participant's needs and assets (college funding, new house, etc.) and assets (taxable and nontaxable) before selecting the appropriate portfolio. Ibbotson believes that this approach yields a more appropriate overall portfolio/savings match with the Plan participant's needs. To the extent input is provided by the Plan participant, the Ibbotson process takes into account items such as savings, current balances, investment makeup, and projected cash in-flows and out-flows for both Plan participant and his or her spouse.

Step 3: Calculate current situation. The Plan participant will be shown two separate scenarios through the Ibbotson

advice application. The first calculates what chance the Plan participant might have of making his or her retirement goals if he or she continues with the current portfolio risk level and savings rate as entered in Step 2. The second recommends an advice solution and is described in Step 4.

To calculate what chances the Plan participant has of making the retirement goals if no change to the portfolio or savings rate is made, the software uses the simulation data to calculate the wealth that might be accumulated under hundreds of possible future scenarios. These calculations take into account Social Security payments, taxes, and all of the other savings and withdrawals the Plan participant has entered as well as the various investment return and inflation scenarios. Some of these future wealth and income levels will be good, some will be average and some will be inadequate relative to the Plan participant's individual retirement goals. The results of all of these calculations are summarized into a few probability statistics that are communicated to the Plan participant.

Step 4: Calculate advice. Ibbotson states that its advice methodology provides the Plan participant with a recommendation that includes the portfolio risk level, savings rate and retirement age. Since in the 401(k) plan world, the advice can only be given on that portfolio alone, the Ibbotson methodology takes all of the Plan participant's total holdings into account (taxable and tax deferred) and proposes a 401(k) portfolio that gets the Plan participant's total holdings as close to optimal as possible.

Ibbotson believes that this presents the Plan participant with a more balanced solution for achieving his or her goals with the flexibility to change the parameters if he or she sees fit. Starting with a better balanced portfolio means that Plan participants just looking for an answer will get a sound answer more quickly and Plan participants that want to experiment with different levels of risk, savings rate, and or retirement age will start from a more solid position.

Step 5: Present results. The advice process has many steps. However, the user only sees the results of Steps 4 and 5. The typical statistics that will be shown include the most likely income level that the Plan participant might have along with the least likely possibilities. These statistics for the scenario where no changes are made and for those where the Plan participant implements the advice will be displayed side by side so the Plan participant can easily see the differences. When compared to the level of income the Plan participant would like in retirement, this process shows the Plan participant just how much risk is being taken and just how likely the Plan participant is of hitting his or her goals. Ibbotson believes there is no better way to show a Plan participant in terms that can be understood of the risk and reward of the decisions he or she makes. Ibbotson also presents a short-term risk measure to assist in understanding volatility on the way to retirement and its impact on long-term goals. A Plan participant can further individualize the solution if he or she wants to take more risk, cannot save as much as recommended, or wants to change his or her retirement age.

Once finalized, the Plan participant can then implement his or her decision. Although the solution is a ''snapshot'' based on the then-inputted data, the system will inform the Plan participant periodically of the need to review his or her situation. It will also be stated that his revisiting is most important if there have been any changes in the Plan participant's assumptions such as a promotion or the birth of a child. Under any circumstances, a Plan participant will be cautioned to review his or her situation once a year to update any changes to the information upon which the advice was based and to adjust their 401(k) portfolio, if needed.

9. Ibbotson represents that it will maintain insurance coverage in the amount of at least $5 million for the payment of any liabilities that may arise by reason of a breach of fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions of section 406 of the Act or section 4975 of the Code. This insurance coverage will be available to provide financial support to Ibbotson in the event a breach of fiduciary duty claim is brought against Ibbotson, and it is determined that Ibbotson has incurred liabilities by reason of such breach. The insurance shall be provided pursuant to a ''claims made'' policy which covers claims made during the policy period. In the event that Ibbotson changes insurers or ceases to provide the Service, Ibbotson will maintain ''tail coverage'' with respect to claims made for a period of up to three years after such change.[15]

10. The Applicant represents that potential Service Providers will include banks and trust companies, mutual fund companies, brokerage firms and insurance companies. They will be required to meet minimum standards prior to participating in the provision of the Service. To qualify as a Service Provider, the entity must either be: (a) A commercial bank or trust company, savings and loan association, insurance company, or registered investment adviser which meets the definition of a ''qualified professional asset manager'' (QPAM) set forth in Part V(a) of Prohibited Transaction Exemption 84–14; and have total client assets under management and control in an amount no less than $250 million, or (b) a broker-dealer regulated under the Securities Exchange Act of 1934 and which had, as of the last day of its most recent fiscal year, $1 million in shareholders' and partners' equity, or total client assets under management and control in an amount no less than $250 million.

In addition, the Applicant will require that each candidate meet minimum standards to ensure: (1) The availability of multiple investment options across a number of asset classes, (2) adequate service capabilities and service performance standards, with an ongoing adherence to those standards, (3) the absence of dependence solely upon bundled products [16] for defined contribution Plans, and (4) the Service Provider must in Ibbotson's view, have a high level of professionalism and accountability.

Further, the entity must have adequate capitalization; have been in the financial services business for three years and not been convicted of a felony offense involving abuse or misuse of such entity's employee benefit plan position or employment, or any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary.

11. In providing the Service, depending on the specific circumstances surrounding a particular Plan and the outcome of negotiations between Ibbotson and the Plan sponsor or Service Provider, the fees that Ibbotson will charge will include some or all of the following fees. A technology licensing fee will be charged to the Service Provider. This fee is a one-time fee charged in the first year the Service is provided to a Plan based on the

[15] The Department notes that the condition requiring the maintenance of $5 million of insurance coverage will not foreclose future consideration by the Department of another mechanism designed to assure some degree of financial accountability in the event of breaches of fiduciary duty described in section 404 or violations of the prohibited transaction provisions.

[16] Bundled products provide employers with a package of services including record-keeping, legal, administrative, trust, educational, investment, etc., with respect to the establishment and maintenance of plans by employers.

number of Plan participants contained on a Service Provider's record-keeping system. For subsequent years, Ibbotson will charge to the Service Provider a flat per Plan participant fee for each occurrence of at least 10% growth in Plan participants on its record-keeping system (the Revised Technology Fee). In the second year of operation with a Service Provider, Ibbotson will charge a Service Provider a technology maintenance fee equaling up to 20% of the first year's technology licensing fee plus up to 20% of the Revised Technology Fee.

When a Plan sponsor contracts with Ibbotson to customize the Service to its particular Plan, Ibbotson will charge an Internet customization fee to the Plan or the Plan sponsor. This fee is based on the time spent by Ibbotson personnel in its customization of the Service to a particular Plan. In addition, Ibbotson will charge a flat annual per Plan participant advice fee which may be paid by the Plan, Plan sponsor, the Plan participants or the Service Provider.

Finally, Ibbotson will also offer a Plan investment analysis report to Plan sponsors. This report is separate from the investment analysis advice provided to Plan participants and is optional. Ibbotson will analyze the Plan and its investment options. For those Plan sponsors who elect to receive a Plan investment analysis by Ibbotson, Ibbotson will also charge a Plan investment analysis fee based on a flat dollar amount per year. This fee may be paid by the Plan sponsor or the Service Provider.

12. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The participation in the Service will be expressly authorized in writing by an independent fiduciary.

(b) Ibbotson shall provide the independent fiduciary of each Plan with written disclosure describing the Service and all fees and expenses associated with the Service, a written contract for the provision of the Service, a copy of the proposed and final exemption, and summary of annual Plan activity and expense reports.

(c) Ibbotson will furnish the Plan participants with the following: notice that the Service is provided by Ibbotson, an entity that is independent from the Service Provider and the Plan sponsor; and full disclosure about the Service and Ibbotson; and a risk tolerance questionnaire.

(d) Any investment advice given to Plan participants will be based on the Plan participants' responses to the questionnaire and any investment advice provided only will be implemented at the express direction of the Plan participant.

(e) The total fees paid to Ibbotson and a Service Provider by each Plan participant participating in the Service does not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act.

(f) No portion of any fee or other consideration paid to Ibbotson or in connection with the Service will be shared or received by a Service Provider.

(g) Neither the fees charged nor the compensation received by Ibbotson will be affected by the investment selections of Plan participants.

(h) Participation in the Service will not cause the Plan to pay any additional fees or commissions with respect to acquisitions or dispositions of investments offered under the Plan.

(i) No Service Provider shall own any interest in Ibbotson.

(j) Neither Ibbotson nor any affiliate shall own an interest in a Service Provider.

(k) The annual revenues derived by Ibbotson from any one Service Provider shall not be more than 5% of its annual revenues.

(l) Ibbotson will maintain fiduciary liability insurance in the amount of at least $5 million.

Notice to Interested Persons

The Applicant represents that because potentially interested Plan participants and beneficiaries cannot be identified at this time, the only practical means of notifying such Plan participants and beneficiaries of this proposed exemption is by publication in the **Federal Register**. Therefore, comments and requests for a hearing must be received by the Department not later than February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne , US Department of Labor, (202)219–8971. (This is not a toll free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 10th day of January, 2001.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 01–1197 Filed 1–19–01; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on January 27, 2001. The meeting will begin at 10 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Embassy Suites Hotel, 300 Tallapoosa Street, Montgomery, AL.

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 the minutes of the Board's meeting of November 11, 2000.
3. Approval of the minutes of the Executive Session of the Board's meeting of November 11, 2000.
4. Approval of minutes of the Board's telephonic meeting of November 28, 2000.
5. Scheduled Public Speakers.
6. Chairman's Report.
7. Members' Report.
8. Inspector General's Report.
9. President's Report.
10. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
11. Consider and act on the report of the Board's Operations and Regulations Committee.
12. Consider and act on the report of the Board's Finance Committee.
13. Consider and act on the Board's 2000 Annual Performance Reviews Committee's report on the annual evaluation of the Corporation's President.
14. Consider and act on possible dissolution of the Board's 2000 Annual Performance Reviews Committee.
15. Consider and act on adjustment of the President's salary in light of the increase in Level V of the Executive Schedule specified in 5 U.S.C. § 5316.
16. Presentation by John McKay and Tom McWeeney on Strategic Planning performance measures, including the development of performance indicators/performance measurement instruments and the testing of these instruments in the ''real world.''
17. Consider and act on the request by the President of LSC for an exception to the Performance/Incentive Awards Policy adopted by the Board on November 20, 1999, so as to allow the making of a cash award—in this instance, The President's Award—to a corporate officer.
18. Election of Board Chair.
19. Election of Vice-Chair.
20. Consider and act on Board committee appointments.
21. Consider and act on proposed changes to the currently scheduled June 2001, September 2001, and November 2001 Board meetings.
22. Consider and act on the Board's meeting schedule, including designation of locations, for calendar year 2002.

Closed Session

23. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
24. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

25. Consider and act on other business.
26. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

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 Elizabeth S–S Cushing, at (202) 336–8800.

January 18, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–2003 Filed 1–18–01; 2:50 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Sunshine Act Meeting of the Board of Directors Finance Committee.

TIME AND DATE: The Finance Committee of the Legal Services Corporation Board of Directors will meet on January 26, 2001. The meeting will begin at 3:15 p.m. and continue until the Committee concludes its agenda.

LOCATION: Embassy Suites Hotel, 300 Tallapoosa Street, Montgomery, AL.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Consider and act on staff recommendation to change LSC's pension provider.
3. Office of the Inspector General's presentation of the Corporation's FY '00 annual audit.
4. Review and adoption of FY '01 operating budget for the Corporation.
5. Review of expenses through November 30, 2000.
6. Consider and act on other business.
7. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel, & Corporate Secretary, at (202) 336–8800.

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 Elizabeth S–S Cushing, at (202) 336–8800.

Dated: January 18, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, & Corporate Secretary.

[FR Doc. 01–2004 Filed 1–18–01; 2:50 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on January 26, 2001. The meeting will begin at 1:00 p.m. and continue until the Committee concludes its agenda.

LOCATION: Embassy Suites Hotel, 300 Tallapoosa Street, Montgomery, AL.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 10, 2000.
3. Consider and act on the Property Acquisition and Management Manual.
4. Consider and act on the Interim Report of the Regulations Review Task Force.
5. Consider and act on other business.
6. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

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 Elizabeth S-S Cushing, at (202) 336–8800.

[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.

Dated: January 18, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–2005 Filed 1–18–01; 2:50 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on Performance Reviews of the President

TIME AND DATE: The Ad Hoc Committee on Performance Reviews of the President of the Legal Services Corporation's Board of Directors will meet on January 26, 2001. The meeting will begin at 4:30 p.m. and continue until conclusion of the committee's agenda.

LOCATION: Embassy Suites Hotel, 300 Tallapoosa Street, Montgomery, AL.

STATUS OF MEETING: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(a) & (e)]. 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 the minutes of the Committee's meeting of November 10, 2000.

CLOSED SESSION:

3. Consider and act on recommendation to the Board of Directors on the annual evaluation of the President for FY 2000.

OPEN SESSION:

4. Consider and act on other business.
5. Public comment

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

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 Elizabeth S-S Cushing at (202) 336–8800.

Dated: January 18, 2001.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–2006 Filed 1–18–01; 2:50 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on January 26, 2001. The meeting will begin at 9:00 a.m. and continue until the Committee concludes its agenda

LOCATION: Embassy Suites Hotel, 300 Tallapoosa Street, Montgomery, AL.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of November 10, 2000.
3. Panel presentation by Willie Abrams (LSC Program Counsel) and representatives of Legal Services Corporation of Alabama, Legal Services of North-Central Alabama, and Legal Services of Metro Birmingham on the problems and challenges programs face in serving rural southern clients.
4. Panel presentation on Building a State Justice Community in Alabama by Joseph Dailing (Executive Director of Prairie State Legal Services in Illinois and a state planning consultant with LSC), Robert Gross (LSC Senior Program Counsel for State Planning), and representatives of the LSC-funded Alabama programs—Legal Services Corporation of Alabama, Legal Services of North-Central Alabama, and Legal Services of Metro Birmingham.
5. Update on State Planning by Randi Youells and Robert Gross.
6. Update by Randi Youells on recent activities, including Results Project, Performance Measures, CSR Self-Inspection, Technology Initiative Grants, Competition and Grants Management, the Client-Centered Conference, the Leadership and Diversity Project, and the Gender Task Force.
7. Consider and act on other business.
8. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Secretary of the Corporation, at (202) 336–8800.

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 Elizabeth S-S Cushing, at (202) 336–8800.

Dated: January 18, 2001.

Victor M. Fortuno.

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 01–2007 Filed 1–18–01; 2:50 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–017]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before February 21, 2001.

ADDRESSES: All comments should be addressed to Mr. Brian Dunbar, Code PM, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Voluntary Response Survey of NASA Internet Customers.

OMB Number: 2700–.

Type of review: New.

Need and Uses: NASA is seeking input from Internet users that they will use to redesign the NASA Home Page, the NASA-wide Search Engine and other Internet offerings so that the NASA Web is more customer-focused and provides users with the information they are seeking more quickly.

Affected Public: Individuals or households.

Number of Respondents: 100.

Responses Per Respondent: 4.

Annual Responses: 400.

Hours Per Request: 15 min.

Annual Burden Hours: 100.

Frequency of Report: Quarterly.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 01–1777 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–007]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Rob Padilla, Patent Counsel, Ames Research Center, Mail Code 202A–3, Moffett Field, CA 94035; Tel. (650) 604–5104; Fax (650) 604–7486.

NASA Case No. ARC–14231–2: Body Sensing System;

NASA Case No. ARC–14231–3: Multimodality Instrument for Tissue Characterization;

NASA Case No. ARC–14254–1: Waterproofing of Low Density Aerogels;

NASA Case No. ARC–14418–1: En Route Spacing System and Method;

NASA Case No. ARC–14494–1: Characterization of Bioelectric Potentials.

Dated: January 11, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–1767 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–008]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: John Kusmiss, Patent Counsel, NASA Management Office-JPL, 4800 Oak Grove Drive, Mail Stop 180–801, Pasadena, Ca 91109; Tel. (818) 354–7770.

NASA Case No. NPO–19442–2: Composite Material Switches;

NASA Case No. NPO–20837–1: Evolutionary Technique for Automated Synthesis of Electronic Circuits;

NASA Case No. DRC–098–096: Helicopter Tail Boom with Venting for Alleviation and Control of Tail Aerodynamic Boom Loads and Methods Thereof;

NASA Case No. DRC–099–016: Wind Advisory System.

Dated: January 11, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–1768 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–009)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Gomet, Patent Attorney, Goddard Space Flight Center, Mail Code 750.2, Greenbelt, MD 20771; 301–286–6521.

NASA Case No. GSC–13913–1: Sol-Gel Processing to Form Doped Sol-Gel Monoliths Inside Hollow Core Optical Fiber and Sol-Gel Core Fiber Devices Made Thereby;

NASA Case No. GSC–13988–1: Combination Radial and Thrust Magnetic Bearings; NASA Case No. GSC–14240–1: Methods and Systems for Collecting Data from Multiple Fields of View;

NASA Case No. GSC–14302–1: Three Dimensional Empirical Mode Decomposition Analysis Apparatus and Method.

Dated: January 11, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–1769 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 01–010]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Mail Code 500–118, Cleveland, Ohio 44135; Tel. (216) 433–8855; Fax (216) 433–6790.

NASA Case No. LEW–16685–2: Shape Memory Alloy Actuator;

NASA Case No. LEW–16056–3: Procedure for Making a Hollow Cathode Assembly;

NASA Case No. LEW–16684–1: Thermal Barrier Braided Rope Seal;

NASA Case No. LEW–16685–2: Actuator Control Using Shape Memory Alloys, Microsystems and Optically Controlled Switches;

NASA Case No. LEW–16690–1: An Assembly for Moving a Robotic Device along Selected Axes;

NASA Case No. LEW–16790–1: Exoskeletal Engine;

NASA Case No. LEW–16871–1: Method and Apparatus for Removal of Biologically Active Contaminants from the Surfaces of Surgical Implants and Other Biomedical Components and Materials;

NASA Case No. LEW–16999–1: Thermocouple Boundary Layer Rake;

NASA Case No. LEW–17022–1: Etch-Stop Fuse for Precision Thickness and Depth Control;

NASA Case No. LEW–17041–1: Method of Improving the Plating Process Employing Directed High Intensity Acoustic Beams.

Dated: January 11, 2001.

Edward A. Frankle,

General, Counsel.

[FR Doc. 01–1770 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–011)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, Texas 77058–3696; Tel. (281) 483–4871; Fax (281) 244–8452.

NASA Case No. MSC–22616–3: Preservation of Liquid Biological Samples;

NASA Case No. MSC–22633–1: Growth Stimulation of Biological Cells and Tissue by Electromagnetic Fields and Uses Thereof;

NASA Case No. MSC–22936–2: Microencapsulated Bioactive Agents and Method of Making;

NASA Case No. MSC–23049–2: Method of Constructing a Microwave Antenna;

NASA Case No. MSC–23049–3: Method for Selective Thermal Ablation;

NASA Case No. MSC–23049–4: Computer Program for Microwave Antenna.

Dated: January 11, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–1771 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–012)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Blackburn, Patent Counsel, NASA Langley Research Center, Mail Code 212, Hampton, VA, 23681–2199; Tel. (757) 864–9260; Fax (757) 864–9190.

NASA Case No. LAR–15449–2: Method to Prepare Processable Polyimides with Reactive Endgroups Using 1, 3-Bix (3-Aminophenoxyl) Benzene (Continuing App of –1);

NASA Case No. LAR–15470–1–CU: Dry Process for Manufacturing Hybridized Boron Fiber-Carbon Fiber Thermoplastic Composite Materials;

NASA Case No. LAR–15543–2: Phenylethynyl Containing Reactive Additives (Divisional of LAR–15543–1);

NASA Case No. LAR–15642–1: High Pressure, High Frequency Fluid Valve;

NASA Case No. LAR–15712–1–CU: Catalytic Oxidation Sensor for Hydrocarbons and Volatile Organic Compounds;

NASA Case No. LAR–15817–1: Method and Apparatus for Encouraging Physiological Self-Regulation Through Modulation of an Operator's Control Input to a Video Game;

NASA Case No. LAR–15851–1–CU: Process for Coating Substrates with Catalyst Materials;

NASA Case No. LAR–15852–1: Dry Process for Manufacturing Hybridized Boron Fiber/Carbon Fiber Thermoplastic Composite Materials from a Solution Coated Precursor;

NASA Case No. LAR–15926–1: Reference Sample Technique to Measure Material Nonlinearity;

NASA Case No. LAR–15954–1: Single Laser Sweep Full S-Parameter Characterization of Fiber Bragg Gratings;

NASA Case No. LAR–15960–1: Polymer-Polymer Bilayer Actuator;

NASA Case No. LAR–15962–1–CU: Poly (Aryl Ether Ketones) Bearing Alkylated Side Chains;

NASA Case No. LAR–16005–1: High Precision Solid State Wavelength Monitor;

NASA Case No. LAR–16038–1: Electrostrictive Graft Elastomers;

NASA Case No. LAR–16039–1: Non-Uniform Thickness Electroactive Device;

NASA Case No. LAR–16219–1: Membrane Position Control;

NASA Case No. LAR–16220–1: Membrane Tension Control.

Dated: January 11, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–1772 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–013)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: James McGroary, Patent Counsel, Marshall Space Flight Center, Code LS01, Huntsville, AL 35812; Tel. (256) 544–0013; Fax (256) 544–0258.

NASA Case No. MFS–26378–1: Plasma Spray Capacitance and Capaciflector Sensor Probes;

NASA Case No. MFS–31138–2–DIV: Method of Making a Rocket Engine Thrust Chamber Assembly;

NASA Case No. MFS–31148–2–DIV: Fabrication Process for Combustion Chamber/Nozzle Assembly;

NASA Case No. MFS–31175–2–CIP: Gasket Assembly for Sealing Mating Surfaces;

NASA Case No. MFS–31229–1: Method and Apparatus for Applying Readable Identification Symbols to Substrates;

NASA Case No. MFS–31289–2: Method and System for Reducing Plasma Loss in a Magnetic Mirror Fusion Reactor;

NASA Case No. MFS–31294–2–CIP: Aluminum Alloy and Articles Cast Therefrom;

NASA Case No. MFS–31294–5–CIP: Aluminum-Silicon Alloy Having Improved Properties at Elevated Temperatures and Articles Cast Therefrom;

NASA Case No. MFS–31294–6–CIP: Aluminum-Silicon Alloy Having Improved Properties at Elevated Temperatures and Process for Producing Cast Articles Therefrom;

NASA Case No. MFS–31379–2–DIV: Method of Making a Composite Tank;

NASA Case No. MFS–31432–1: Panoramic Detection System for Generating a 360-Degree Image;

NASA Case No. MFS–31455–1: Process for a High Efficiency Class D

Microwave Power Amplifier Operating in the S-Band;

NASA Case No. MFS–31475–1: Panoramic Refracting Optic (PRO);

NASA Case No. MFS–31524–1: SADL: Simulation Architecture Description Language.

Dated: January 11, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–1773 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–014)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Diana Cox, Patent Counsel, Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL, 32899; Tel. (321) 867–7214; Fax (321) 867–1817.

NASA Case No. KSC–12052: Communications Interface for Wireless Communications Headset;

NASA Case No. KSC–12056: Air Pollution Control Method and Apparatus for Removal of Nitrogen Oxides from Stationary Combustion Sources;

NASA Case No. KSC–12144: Architectural Assessment Tool—Enhanced (AATe);

NASA Case No. SSC–00120–1: Seal Ring Installation Tool.

Dated: January 11, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–1774 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–016)]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Propulsion Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aero-Space Technology Advisory Committee, Propulsion Systems Subcommittee meeting.

DATES: Thursday, February 15, 2001, 8 a.m. to 5 p.m. and Friday, February 16, 2001, 8 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, Administration Building, Room 215, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Arun K. Sehra, National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–3397.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aerospace Programmatic Overview

—NASA GRC Aeropropulsion Overview

—Ultra-Efficient Engine Technology Review

—Propulsion Systems Base R&T Prog. Review

—GPRA Milestones Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: January 16, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–1776 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–015)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

Federal Register Citation of Previous Announcement: 65 FR 243, Notice Number 00–143, December 18, 2000.

Previously Announced Date and Address of Meeting: Wednesday, January 31, 2001, 12 p.m.–1 p.m. Eastern Standard Time; NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

Changes in the Meeting: Date changes to Wednesday, February 7, 2001; Time remains 12 p.m.–1 p.m. Eastern Standard Time; NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support the new crew and the American and Russian flight team's preparedness to accomplish the Expedition Two mission.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: January 16, 2001.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–1775 Filed 1–19–01; 8:45 am]

BILLING CODE 7510–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8]

Calvert Cliffs Nuclear Power Plant; Notice of Docketing of the Materials License SNM–2505 Amendment Application for the Calvert Cliffs Independent Spent Fuel Storage Installation

By letter dated November 16, 2000, Calvert Cliffs Nuclear Power Plant (CCNPP) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission) in accordance with 10 CFR Part 72 requesting an amendment of the Calvert Cliffs independent spent fuel storage installation (ISFSI) license (SNM–2505) for the ISFSI located in Calvert County, Maryland. CCNPP is seeking Commission approval to amend the materials license to reflect changes to License Conditions 9, 12, and 16. Changes to Conditions 9 and 12 involve eliminating references to certain documents. Changes to Condition 16 involve elimination of the helium leak test for the double-closure seal welds located at the bottom of the dry shielded canisters.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–8 and will remain the same for this action. The amendment of an ISFSI license is subject to the Commission's approval.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or, if a determination is made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this application, see the application dated November 16, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, or from the publically available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web Site at *http://www.nrc.gov/nrc/adams/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 5th day of January 2001.

For the U.S. Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–1597 Filed 1–19–01; 8:45 am]

BILLING CODE 7590–01–P

NOTICE REGULATORY COMMISSION

[Docket No. 70–3098]

Notice of Opportunities for Hearings Related to Licensing the Mixed Oxide Fuel Fabrication Facility

Within the next several months, the U.S. Nuclear Regulatory Commission (NRC) expects to receive an application from Duke Cogema Stone & Webster (DCS) to construct and operate a mixed oxide (MOX) fuel fabrication facility to be located at the U.S. Department of Energy's Savannah River Site. The regulations in 10 CFR part 70 for a plutonium fuel fabrication plant contemplate two approvals—approval for construction (10 CFR 70.23(a)(7), (b)) and approval for operation (10 CFR 70.23(a)(8)). The regulations in 10 CFR part 70 do not, however, mandate a particular approval or hearing process. The appropriate approval and hearing process—one stage or two stage—will depend largely on the nature, level of detail and degree of completeness of the application. This notice is intended to inform the public of the staff's planned approach for possible hearing issues related to the MOX fuel fabrication facility.

Although the regulations do not require the applicant to submit a comprehensive and complete application covering both construction and operation before the Commission can approve commencement of construction, an applicant has the option of submitting a complete license application addressing both construction and operation at the outset. We understand, however, that DCS will be submitting an initial application (including the environmental report) focusing on siting matters and the design bases of the principal structures, systems, and components, leaving the balance of the information, including detailed design and safety evaluation issues and operating issues, to be addressed in a second submittal. In this case, a two-stage approval and hearing process is appropriate. NRC will be providing an opportunity for a hearing in connection with each of the two required approvals (approval for construction and approval for operation). Any NRC adjudicatory proceedings regarding the MOX facility would be subject to the procedural requirements of 10 CFR part 2, Subpart L.

The first hearing would encompass issues related to the construction approval, and would likely be limited to whether applicable NRC requirements have been met regarding the general design bases for the principal structures, systems, and components, the quality assurance program, and environmental issues. The second hearing would encompass all other issues related to the issuance of a 10 CFR part 70 license. Such issues would include whether operation of the MOX facility, as constructed, will adequately protect health, minimize danger to life or property, and control special nuclear material.

FOR FURTHER INFORMATION CONTACT: Timothy C. Johnson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7299.

Dated at Rockville, Maryland, this 11th day of January 2001.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 01–1598 Filed 1–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–354]

PSEG Nuclear LLC; Notice of Consideration of Issuance of Amendment To Facility Operating License No. NPF–57 Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to PSEG Nuclear LLC (the licensee) for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

The proposed amendment would revise the Technical Specifications (TS) to change the acceptance values for Core Spray subsystem flow contained in TS 4.5.1.b.1 from the current value of 6350 gallons per minute (gpm) to 6150 gpm.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change specifies revised surveillance values for the Core Spray System and does not alter any system or modify any operating procedures. The Core Spray pumps will remain able to perform their required safety related function in order to provide cooling to the reactor core. The revised surveillance value will not increase the consequences of accidents previously evaluated in the SAR [Safety Analysis Report].

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change specifies revised surveillance requirements of the core spray system and makes no changes to the physical plant or operating procedures. No new accident scenarios, failure mechanisms or limiting single failures are created as a result of the proposed change in the core spray system surveillance value. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change specifies surveillance requirements for the core spray system. Analyses have determined that for operation at the new surveillance limit, fuel cladding oxidation and hydrogen generation remain within previously analyzed limits. There will not be a significant increase in peak cladding temperature resulting from this change and that the limits specified in 10CFR50.46 continue to be met.

10CFR50.46 (b)(1) Peak cladding temperature. The calculated maximum fuel element cladding temperature shall not exceed 2200° F.

(2) Maximum cladding oxidation. The calculated total oxidation of the cladding shall nowhere exceed 0.17 times the total cladding thickness before oxidation.

(3) Maximum hydrogen generation. The calculated total amount of hydrogen generated from the chemical reaction of the cladding with water or steam shall not exceed 0.01 times the hypothetical amount that would be generated if all of the metal in the cladding cylinders surrounding the fuel, excluding the cladding surrounding the plenum volume, were to react.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. Thus, the proposed change, which revises the surveillance limit for the core spray system, does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 21, 2001, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Jeffrie J. Keenan, Esquire, PSEG Nuclear—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 8, 2001, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 16th day of January, 2001.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–1779 Filed 1–19–01; 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 a request by Vermont Yankee Nuclear Power Corporation (VYNPC, the licensee) to withdraw its December 21, 1999, as supplemented on September 12 and 19, 2000, application for an 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 Technical Specifications (TS) to change the control rod block requirements consistent with the BWR/4 Standard Technical Specifications.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment on January 26, 2000 (65 FR 4291). However, by letter dated December 26, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 21, 1999, as supplemented on September 12 and 19, 2000, and the licensee's letter dated December 26, 2000, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 12th day of January 2001.

For the Nuclear Regulatory Commission.

Robert M. Pulsifer,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–1601 Filed 1–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–29]

Yankee Atomic Electric Company; Notice of Withdrawal of Application for Amendment to the Possession Only License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Yankee Atomic Electric Company (the licensee) to withdraw its March 17, 1999, application for proposed amendment to the Possession Only License No. DPR–3 for the Yankee Nuclear Power Station, located in Rowe, Massachusetts.

The proposed amendment would have revised the Yankee Nuclear Power Station's Defueled Technical Specifications by transferring the administrative requirements to the Yankee Decommissioning Quality Assurance Program.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 7, 1999 (64 FR 17032). However, by letter dated

April 23, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 17, 1999, and the licensee's letter dated April 23, 1999, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 12th day of January 2001.

For the Nuclear Regulatory Commission.

Phillip M. Ray,

Project Manager, Project Directorate IV & Decommissioning Division of Licensing Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 01–1778 Filed 1–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Service Provider Licenses

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of final NUREG.

SUMMARY: The NRC is announcing the availability of the final NUREG–1556, Volume 18, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Service Provider Licenses,'' dated November 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This final NUREG report is the eighteenth guidance document developed to support an improved materials licensing process.

This guidance is intended for use by applicants, licensees, and the NRC staff, and will also be available to Agreement States. This document combines and updates the guidance found in the following draft regulatory guides: ''Guide for the Application for a License for the Use of Radioactive Materials for Calibrating Radiation Survey and Monitoring Instruments,'' ''Guide for the Application for the Use of Radioactive Materials in Leak-Testing Services,'' and ''Guide for the Applications for the Use of Radioactive Materials in Servicing Preregistered Gauges, Measuring Devices, and Sealed Sources Used in Such Devices.'' Additionally, NRC staff included information contained in the corresponding Standard Review Plans for these three draft regulatory guides. This final report takes a more risk-informed, performance-based approach to licensing service providers, and reduces the information (amount and level of detail) needed to support an application for these activities. This final document may be used for preparing or reviewing service provider licenses.

A free single copy of final NUREG–1556, Volume 18, may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–C–24, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to cxb@nrc.gov. A copy of final NUREG–1556, Volume 18, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Carrie Brown, TWFN 9–F–24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8092; electronic mail address: cxb@nrc.gov.

Electronic Access

Final NUREG–1556, Volume 18, is available electronically by visiting the NRC's Home Page (http://www.nrc.gov/nrc/nucmat.html).

Dated at Rockville, Maryland, this 9th day of January, 2001.

For the Nuclear Regulatory Commission,

Patricia K. Holahan,

Chief, Rulemaking and Guidance Branch Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 01–1599 Filed 1–19–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Guidance for Agreement State Licensees About NRC Form 241 ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters' and Guidance for NRC Licensees Proposing To Work in Agreement State Jurisdiction (Reciprocity)

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability of final NUREG.

SUMMARY: The NRC is announcing the availability of the final NUREG–1556, Volume 19, ''Consolidated Guidance About Materials Licenses: Guidance For Agreement State Licensees About NRC Form 241 ''Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters' and Guidance For NRC Licensees Proposing to Work in Agreement State Jurisdiction (Reciprocity),'' dated December 2000.

The NRC is using Business Process Redesign techniques to redesign its materials licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports. This final NUREG report is the nineteenth guidance document developed to support an improved materials licensing process.

This guidance is intended for use by Agreement State licensees, NRC licensees, NRC staff, and will also be available to Agreement States. This document also provides contact organization guidance to NRC licensees who wish to work in Agreement States.

This document combines and updates the guidance for applicants and licensees previously found in NRC Inspection Manual Chapter 1220, ''Processing of 'Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, and Offshore Waters,' and Inspection of Agreement State Licensees Operating Under 10 CFR 150.20''; NRC Information Notice No. 90–15: ''Reciprocity: Notification Of Agreement State Radiation Control Directors Before Beginning Work In Agreement States''; All Agreement States Letter 96–022, Policy and Guidance Directives (P&GD) 83–19 ''Jurisdiction at Reactor Facilities'' and 84–17 ''Jurisdiction 10

CFR parts 30, 40 and 70 Licenses at Reactor Facilities.'' In addition, this final report contains pertinent information found in Technical Assistance Requests and Information notices, as listed in Appendix F of the NUREG.

A free single copy of final NUREG–1556, Volume 19, may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Carrie Brown, Mail Stop TWFN 9–C24, Washington, DC. 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to cxb@nrc.gov. A copy of the final NUREG–1556, Volume 19, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Carrie Brown, TWFN 9–F–C24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, telephone (301) 415–8092; electronic mail address: cxb@nrc.gov.

Electronic Access

Final NUREG–1556, Volume 19, is available electronically by visiting the NRC's Home Page (http://www.nrc.gov/nrc/nucmat.html).

Dated at Rockville, Maryland, this 9th day of January, 2001.

For the Nuclear Regulatory Commission.

Patricia K. Holahan,

Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 01–1600 Filed 1–19–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Pam Shivery, Director, Washington Service Center, Employment Service (202) 606–1015.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 December 7, 2000 (65 FR 76675). Individual authorities established or revoked under Schedule C between November 1, 2000, and November 30, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule C

The following Schedule C authorities were established during November 2000:

Commission on Civil Rights

Special Assistant to the Commissioner. Effective November 22, 2000.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Housing Service. Effective November 2, 2000.

Confidential Assistant to the Administrator, Rural Housing Service. Effective November 3, 2000.

Confidential Assistant to the Administrator, Rural Business-Cooperative. Effective November 9, 2000.

Department of Defense

Staff Specialist to the Deputy Assistant Secretary of Defense for Asian and Pacific Affairs. Effective November 2, 2000.

Department of Education

Confidential Assistant to the Deputy Secretary. Effective November 2, 2000.

Confidential Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective November 6, 2000.

Department of Energy

Special Assistant to the Administrator for National Nuclear Security Administration. Effective November 16, 2000.

Department of Housing and Urban Development

Secretary's Representative to the Deputy Secretary. Effective November 17, 2000.

Special Assistant to the Director, Office of Executive Scheduling. Effective November 30, 2000.

Department of the Interior

Special Assistant to the Director of External Affairs. Effective November 9, 2000.

Department of State

Program Officer to the Assistant Secretary, Office of International Visitors, Bureau of Educational and Cultural Affairs. Effective November 15, 2000.

Department of Transportation

Special Assistant to the Administrator, Federal Highway Administration. Effective November 2, 2000.

Special Assistant to the Director, Office of Public Affairs. Effective November 2, 2000.

Deputy Director of Public Affairs to the Assistant to the Secretary and Director of Public Affairs. Effective November 2, 2000.

Intergovernmental Liaison Officer to the Director, Office of Intergovernmental Affairs. Effective November 6, 2000.

Small Business Administration

Special Assistant to the Deputy Chief of Staff. Effective November 22, 2000.

Scheduler to the Deputy Administrator. Effective November 22, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp.; P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 01–1747 Filed 1–19–01; 8:45 am]

BILLING CODE 6325–01–U

SECURITIES AND EXCHANGE COMMISSION

[Rule 17a–12; SEC File No. 270–442; OMB Control No. 3235–0498]

Submission for OMB Review; Comment Request

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17a–12, Reporting Requirements for OTC Derivatives Dealers

Rule 17a–12 under the Securities Exchange Act of 1934 requires OTC derivatives dealers to file quarterly Financial and Operational Combined Uniformed Single Reports (FOCUS) on Form X–17A–5IIB,[1] the basic document for reporting the financial and operational condition of OTC

[1] Form X–17a–5 [17 C.F.R. 249.617].

derivatives dealers. Rule 17a–12 also requires that OTC derivatives dealers annually file audited financial statements. The reports required under Rule 17a–12 provide the Commission with information used to monitor the operations of OTC derivatives dealers and to enforce their compliance with the Commission's rules. These reports also enable the Commission to review the business activities of OTC derivatives dealers and to anticipate, where possible, how these dealers may be affected by significant economic events.

The staff estimates that that the average amount of time necessary to prepare and file the information required by Rule 17a–12 is 180 hours per OTC derivatives dealer annually, where the OTC derivatives dealer spends an average of twenty hours preparing each of four quarterly reports, and an additional 100 hours on the annual audit. One entity is presently registered as an OTC derivatives dealer, however the staff estimates that between five and nine additional OTC derivatives dealers may become registered within the next three years. Thus the total burden is estimated to be 1,080 hours annually for six OTC derivatives dealers.[2]

The staff believes that financial reporting specialists will prepare the FOCUS IIB Reports and supporting Schedules, compliance personnel may review the reports to assure compliance with applicable rules, and accountants will prepare the audited annual reports. The staff estimates that the hourly salary of a financial reporting specialist is $72.40 per hour,[3] the hourly salary of a compliance manager is $82.50 per hour,[4] and the hourly salary of a compliance manager is $51.60 per hour.[5] Based upon these numbers, the total cost of compliance for six respondents is $65,950.00 per year.[6]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[2] Or 1,800 hours annually for ten OTC derivatives dealers.

[3] Per Securities Industry Association (SIA) Management and Professional Earnings, Table 011 (Financial Reporting Manager) + 35% overhead (based on end-of-year 1998 figures).

[4] SIA Management and Professional Earnings, Table 051 (Compliance Manager) + 35% overhead (based on end-of-year 1998 figures.)

[5] SIA Management and Professional Earnings, Table 003 (Senior Accountant) + 35% overhead (based on end-of-year 1998 figures).

[6] ((19 hours × $72.40 × 4 filings per year) + (1 hour × $82.50 per hour × 4 filings per year) + (100 hours × $51.60 × 1 filing per year) × six OTC derivatives dealers. The total cost for ten respondents would be $109,924.00 per year.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within thirty days of this notice.

Dated: January 9, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1748 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24826; 813–212]

BankBoston Co-Investment Partners (1999) L.P. and FleetBoston Financial Corporation; Notice of Application

January 11, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (''Act'') granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain partnerships and other entities formed for the benefit of key employees of FleetBoston Financial Corporation and its affiliates from certain provisions of the Act. Each partnership or other entity will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

APPLICANTS: BankBoston Co-Investment Partners (1999) L.P. (''Initial Partnership'') and FleetBoston Financial Corporation, on behalf of other partnerships or other investment vehicles which have been or may in the future be formed or through which a Partnership (as defined below) may invest (''Other Partnerships,'' and together with the Initial Partnership, ''Partnerships'').

FILING DATES: The application was filed on August 18, 1999, and amended on January 11, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 5, 2001, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: BankBoston Co-Investment Partners (1999) L.P., 175 Federal Street, Boston, MA 02110; FleetBoston Financial Corporation, 100 Federal Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, 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 SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. FleetBoston Financial Corporation is a diversified financial services company organized under the laws of the State of Rhode Island. FleetBoston Financial Corporation and its affiliates (as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), other than Third Party Funds (as defined below), are referred to in this notice collectively as ''FleetBoston.''

2. The Initial Partnership is a limited partnership organized under the laws of the State of Delaware. FleetBoston formed the Initial Partnership to provide investment opportunities to certain of its key employees.

3. FleetBoston may organize Other Partnerships in the future. Each Partnership will be a limited partnership or limited liability company formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified,

management investment company.[1] The Partnerships will be established primarily for the benefit of highly compensated employees of FleetBoston as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

4. Each Partnership will have a general partner (''General Partner'') that is an affiliate that controls, is controlled by or is under common control with FleetBoston Financial Corporation. The General Partner or another FleetBoston entity will act as the investment adviser to a Partnership and will be: (a) Registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), (b) exempt from the registration requirements of the Advisers Act by virtue of section 203(b)(3) of the Advisers Act, or (c) excluded from the definition of investment adviser under the Advisers Act because it is a bank or a bank holding company. BBI Management Co. LLC, a Delaware limited liability company, the members of which will be affiliates that control, are controlled by or are under common control with FleetBoston Financial Corporation, will act as the General Partner of the Initial Partnership. BBI Management Co. LLC is exempt from registration under the Advisers Act.

5. The General Partner will manage, operate, and control each of the Partnerships. However, the General Partner may exercise its authority through its board of managers or directors, including a committee of FleetBoston employees.[2] The General Partner will delegate management responsibility only to entities that control, are controlled by, or are under common control with FleetBoston.

6. Interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), or Regulation D under the Securities Act, and will be sold only to ''Eligible Employees,'' as defined below. Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is an individual who is a current or former employee, officer, director, or ''Consultant'' [3] of FleetBoston and: (a) Meets the standards of an ''accredited investor,'' as defined in rule 501(a)(5) or (6) of Regulation D under the Securities Act (an ''Accredited Investor''), or (b) is one of a maximum of 35 individuals who is not an Accredited Investor but who meets certain salary and other requirements (''Other Investors'').

7. Each Other Investor will be an Eligible Employee who: (a) Is a ''knowledgeable employee,'' as defined in rule 3c–5 under the Act, of such Partnership (with the Partnership treated as though it were a ''Covered Company'' for purposes of the rule), or (b) has a graduate degree in business, law, or accounting, has a minimum of five years of consulting, investment banking, or similar business experience, and has had reportable income from all sources of at least $125,000 in each of the two most recent years, and has a reasonable expectation of income from all sources of at least $150,000 in each year in which the Other Investor will be committed to make investments in a Partnership. In addition, an Other Investor qualifying under (b) above will not be permitted to invest in any year more than 10% of his or her income from all sources for the immediately preceding year in the aggregate in the Partnership and in all other Partnerships in which he or she has previously invested.

8. In the discretion of FleetBoston and at the request of an Eligible Employee, an Eligible Employee may assign Interests to an Eligible Family Member or a Qualified Entity, both as defined below (each a ''Qualified Participant''). a Qualified Participant that purchases an Interest from a Partner [4] must be an accredited investor under rule 501(a) of Regulation D. An ''Eligible Family Member'' is a parent, sibling, spouse, child, or grandchild of an Eligible Employee. A ''Qualified Entity'' is: (a) A trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee, (b) a partnership, corporation, or other entity controlled by an Eligible Employee,[5] or (c) a trust or other entity established solely for the benefit of Eligible Family Members of an Eligible Employee.

9. The terms of a Partnership will be fully disclosed to each Eligible Employee in a partnership agreement (the ''Limited Partnership Agreement''), which will be furnished at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Partner as soon as practicable after the end of its fiscal year. In addition, each person who was a Limited Partner [6] of such Partnership at any time during the fiscal year then ended will receive a report setting forth such tax information as will be necessary for the preparation by the Limited Partner of his, her or its federal and state income tax returns.

10. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person or entity will be admitted into a Partnership as a Partner unless the person or entity is an Eligible Employee, a Qualified Participant, or a FleetBoston entity. Interests in the Partnerships will be sold without a sales load.

11. An Eligible Employee's Interest in a Partnership may be subject to repurchase or cancellation if: (a) The Eligible Employee's relationship with FleetBoston is terminated for cause, or (b) the Eligible Employee's employment with FleetBoston ends for any reason. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of: (a) The amount paid by the Eligible Employee to acquire the Interest (less prior distributions, plus a specified rate of return, as determined by the General Partner), or (b) the fair market value of the Interest as determined in good faith at the time of repurchase or cancellation by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

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[1] A Partnership may implement its investment program by investing through another Partnership.

[2] References in this notice to the ''directors of the General Partner'' shall include such board of managers or directors, including a committee of FleetBoston employees.

[3] A ''Consultant'' is a person or entity who FleetBoston has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser to FleetBoston and who shares a community of interest with FleetBoston and FleetBoston's employees.

[4] ''Partner'' means any partner of a Partnership, including the General Partner unless otherwise specified.

[5] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''Qualified Entities'' is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between FleetBoston and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an ''accredited investor'' under 501(a)(6) of Regulation D and who will have access to the General Partner and/or FleetBoston.

[6] ''Limited Partner'' means any limited partner of a Partnership within the meaning of the Delaware Limited Partnership Act.

12. Subject to the terms of the applicable Partnership Agreement, a Partnership will be permitted to enter into transactions involving: (a) A FleetBoston entity, (b) a portfolio company, (c) any Partner or person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with FleetBoston and over which a FleetBoston entity will exercise investment discretion (''Third Party Fund''), or (e) any partner or other investor of a Third Party Fund that is not affiliated with FleetBoston (a ''Third Party Investor''). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any FleetBoston entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

13. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A partnership will not acquire any security issued by a registered investment company if, immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

14. A FleetBoston entity (including the General Partner) acting as agency or broker may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are ''usual and customary.'' Fees or other compensation will be deemed ''usual and customary'' only if: (a) The Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. A FleetBoston entity (including the General Partner) also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities that conflict with the interests of the Partnerships.

15. A Partnership may pay the General Partner an annual management fee, a flat administrative fee or a ''carried interest.'' [7] The administrative fee will serve to reimburse the General Partner for its costs of managing the Partnership, and will include expenses incurred by a FleetBoston entity for services actually rendered to the Partnership without any additional markup.

16. The General Partner or another FleetBoston entity may make loans to a Partnership. Any such loans will bear interest at a rate no less favorable to a Partnership than the rate that could be obtained on an arm's length basis. Any such indebtedness of a Partnership will be non-recourse to the Partners other than the General Partner.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 of the Act from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 though 53, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) A FleetBoston entity or a Third Party Fund (or any affiliated person, as defined in the Act, of any FleetBoston entity or Third Party Fund), acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any FleetBoston entity (or any affiliated person, as defined in the Act, of the FleetBoston entity), acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any FleetBoston entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any FleetBoston entity or Third Party Fund is or will become otherwise affiliated; and (c) any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with a Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants [8] in each Partnership will be fully informed of the extent of the Partnership's dealings with FleetBoston. Applicants also state that, as professionals employed in the banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and FleetBoston will provide the best protection against any risk of abuse.

[7] A ''carried interest'' is an allocation to the General Partner based on the net gains of an investment program. A General Partner that is registered as an investment adviser under the Advisers Act may charge a carried interest only if permitted by rule 205–3 under the Advisers Act. Any carried interest paid to a General Partner that is not registered under the Advisers Act will be structured to comply with section 205(b)(3) of the Advisers Act as if a Partnership were a business development company as defined in the Advisers Act.

[8] ''Participant'' means any Partner other than the General Partner.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with FleetBoston or FleetBoston's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of employee Participants as an incentive for them to remain with FleetBoston and for the generation and maintenance of goodwill. Applicnts believe that, if co-investments with FleetBoston are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of FleetBoston enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by FleetBoston will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by FleetBoston and a Partnership might lead to less advantageous treatment of the Partnership should be mitigated by the fact that FleetBoston will be acutely concerned with its relationship with the investors in the Partnership, and the fact that senior officers and directors of FleetBoston entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of the affiliated person) made a similar investment.

8. Co-investments with Third Party Funds, or by a FleetBoston entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicants note that it is common for a Third Party Fund to require that FleetBoston invest its own capital in Third Party Fund investments, and that FleetBoston investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to FleetBoston. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by FleetBoston in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships vis-á-vis a Third Party Fund.

9. Section 17(e) of the Act and rule 17e–1 under the Act limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a FleetBoston entity (including the General Partner) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation are deemed ''usual and customary.'' Applicants state that for the purposes of the application, fees or other compensation that are charged or received by a FleetBoston entity will be deemed ''usual and customary'' only if: (a) The Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because FleetBoston does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transaction where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a FleetBoston entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the board of directors of the General Partner take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) provides that the securities and similar investments of a registered management investment company must be placed in the custody of a bank, a member of a national securities exchange, or the company itself in accordance with SEC rules. Rule 17f–2 under the Act specifies the requirements that must be satisfied for a registered management investment company to act as a custodian of its own investments. Applicants request an exemption from section 17(f) of the Act and rule 17f–2 under the Act to permit the following exceptions from the requirements of rule 17f–2: (a) A

Partnership's investments may be kept in the locked files of a FleetBoston entity; (b) for purposes of paragraph (d) of the rule, (i) employees of FleetBoston will be deemed to be employees of the Partnerships, (ii) officers or managers of the General Partner of a Partnership will be deemed to be officers of the Partnership, and (iii) the General Partner of a Partnership or its board of directors will be deemed to be the board of directors of the Partnership; and (c) in place of the verification procedure under paragraph (f) of the rule, verification will be effected quarterly by two employees of FleetBoston. Applicants expect that many of the Partnerships' investments will be evidenced only by partnership agreements, participation agreements, or similar documents, rather than by negotiable certificates that could be misappropriated. Applicants assert that these instruments are most suitably kept in the files of a FleetBoston entity, where they can be referred to as necessary.

12. Section 17(g) of the Act and rule 17g–1 under the Act generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's board of directors, who may be deemed interested persons, to take actions and make determinations as set forth in the rule. Applicants state that, because all directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) of the Act and paragraph (b) of rule 17j–1 under the Act make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (b), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Partners. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership, members of the General Partner, or any board of managers or directors or committee of FleetBoston employees to whom the General Partner may delegate its functions, and any other persons who may be deemed to be members of an advisory board of a Partnership, from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of such Partnership and do not involve overreaching of such Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners of such Partnership, such Partnership's organizational documents, and such Partnership's reports to its Partners. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the findings are based, and the basis therefor. All records relating to an investment program will be maintained until the termination of the investment program and for at least two years thereafter, and will be subject to examination by the Commission and its staff.[9]

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for such Partnership, or any affiliated person of such a person, promoter, or principle underwriter.

3. The General Partner of each Partnership will not invest the funds of such Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, and where the investment transaction involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which such Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment: (a) Gives such General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless such Partnership has the opportunity to dispose of such Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with, the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is: (a) An ''affiliated person'' (as such term is defined in the act) of such Partnership (other than a Third Party Fund); (b) FleetBoston; (c) an officer or director of FleetBoston; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or disposition of the entity's securities. The restrictions contained in this condition shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which such Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned

[9] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

subsidiary of its parent; (b) to immediate family members of such Co-Investor or a trust or other investment vehicle established for any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of such Partnership and for at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in such Partnership, and each annual report of such Partnership required to be sent to such Partnerships, and agree that all such records will be subject to examination by the Commission and its staff.[10]

5. The General Partner of each Partnership will send to each Participant in such Partnership who had an interest in any capital account of such Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by such Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of such fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, as soon as practicable after the end of each fiscal year of each Partnership, the General Partner of such Partnership will send a report to each person who was a Participant in such Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his, her, or its federal and state income tax returns, and a report of the investment activities of the Partnership during that fiscal year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with such Partnership by reason of a 5% or more investment in the entity by a FleetBoston employee, officer, or director, such individual will not participate in such Partnership's determination of whether or not to effect such purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1651 Filed 1–19–01; 8:45am]

BILLING CODE 8010–01–M

[10] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27337]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

January 12, 2001.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 6, 2001, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 6, 2001, the application(s) and/or declaration, as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation Fuels and Services Company (70–9775)

Ameren Energy Fuels and Services Company (''Ameren Fuels''), 1901 Chouteau Avenue, St. Louis, Missouri 63103, an indirect wholly owned nonutility subsidiary of Ameren Corporation, a registered holding company, has filed a declaration under sections 12(b) and 13(b) of the Act and rules 54, 90, and 91 under the Act.

Ameren owns all of the issued and outstanding common stock of Union Electric Company (''Union Electric'') and Central Illinois Public Service Company (''DIPS''), each of which is an electric and gas utility company. Together, Union Electric and CIPS provide retail and wholesale electric and retail natural gas services to customers in Missouri and Illinois. Ameren Services Company (''Ameren Services''), a subsidiary service company of Ameren, currently provides various administrative and management services to Union Electric and CIPS and other companies in the Ameren system.

Ameren's direct nonutility subsidiaries include Ameren Energy Resources Company (Ameren Resources), and intermediate subsidiary that holds the securities of other exempt and authorized nonutility companies. Ameren Resources indirectly owns all of the issued and outstanding common stock of Ameren Energy Generating Company (''Ameren GenCo''), an ''exempt wholesale generator'' (''EWG''). Ameren GenCo was formed to acquire all of the generating assets of CIPS, which occurred in May 2000. Ameren Resources also holds all of the common stock of Ameren Fuels, which was formed to engage in fuels-related businesses that are permitted by rule 58.

Ameren Fuels is requesting authorization to provide fuel procurement and natural gas supply services to (including acting as agent for) Union Electric and CIPS. The services, which are similar to those that Ameren Services currently provides to Union Electric and CIPS, would be performed ''at cots'' in accordance with Section 13(b) and Rules 90 and 91 of the Act. Ameren Fuels proposes to provide these services pursuant to the terms of a Fuel and Natural Gas Services Agreement (''Agreement''), which was filed as an exhibit to this application-declaration. The Agreement will be filed with the Missouri and Illinois public utilities commissions.

Entergy Corporation (70–9749)

Entergy Corporation (''Entergy''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company,

has filed an application-declaration under sections 6(a)(1) and (2), 7, 9(a), 10, 12(b), 12(c) and 12(e) of the Act and rules 45, 46, 53, 62 and 65.

Entergy proposes to implement an external financing program to fund its system operations by issuing and selling debt and equity securities directly or through newly organized financing subsidiaries and entering into related transactions, through June 30, 2006 (''Authorization Period''). In summary, Entergy proposes to, directly or indirectly, issue and sell common, preferred and trust preferred stock, various forms of preferred or equity-linked securities and unsecured long-term debt (''Long-Term Debt'') in an aggregate amount not exceeding $2 billion (''Capital Limitation''). Additionally, Entergy proposes to issue and sell additional short-term debt in the form of notes to banks (''Notes'') or commercial paper (''Paper'') that in the aggregate, including existing authority to issue Notes, will not exceed an outstanding principal amount of $1.5 billion (''Short-Term Debt'').[1] Entergy requests authority to solicit proxies from its common shareholders to amend its articles of incorporation to provide for the issuance of preferred stock. Entergy further proposes to acquire the equity securities of one or more special-purpose subsidiaries organized to issue trust preferred stock, preferred and equity linked securities and Long-Term Debt (''Financing Subsidiaries'') and to provide guarantees for any securities issued by the Financing Subsidiaries. Finally, Entergy proposes to enter into hedging transactions regarding the existing debt (''Interest Rate hedges'') or the anticipated debt (''Anticipatory hedges'') authorized to be issued by itself or any of its subsidiaries.

Entergy may issue common stock, options, warrants or other stock purchase rights exercisable for common stock, under negotiated or competitively bid underwriting agreements or through private placements.[2] Entergy may also issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions as consideration for the equity securities or assets of other companies, provided that the Commission has authorized the acquisition of the equity securities or assets or the transaction is exempt under the Act. All common stock sales will be at rates or prices and under conditions negotiated or based on, or otherwise determined by, competitive capital markets.

Entergy may issue, in one or more series, preferred stock directly and trust preferred stock and trust preferred and equity linked securities directly or indirectly through Financing Subsidiaries. The securities will be redeemed no later than 50 years after their issuance. The dividend rate for any series of preferred stock or other preferred or equity-linked securities will not exceed at the time of issuance the greater of: (1) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term comparable to the term of that series, if issued at a fixed rate, or 700 basis points over the London Interbank Offered Rate (''LIBOR'') for the relevant interest rate period, if issued at a floating rate; and (2) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The preferred stock or other preferred or equity-linked securities may be convertible or exchangeable into shares of Entergy common stock.

Entergy states that its Long-Term Debt may be issued, directly or indirectly through Financing Subsidiaries, in one or more series and may be convertible into any other securities of Entergy. The Long-Term Debt will mature in no more than 50 years from the date of issuance. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features of its Long-Term Debt and any associated fees and expenses will be established by negotiation or competitive bidding. The interest rate on Long-Term Debt will not exceed at the time of issuance of any particular series the greater of: (1) 600 basis points over U.S. Treasury securities having a remaining term comparable to the term of that series, if issued at a fixed rate, or 600 basis points over LIBOR for the relevant interest rate period, if issued at a floating rate; and (2) a gross spread over U.S. Treasury securities that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Entergy proposes to issue and sell from time to time Short-Term Debt in the form of Notes and/or Paper or engage in short-term financing arrangements available to borrowers with comparable credit ratings. Notes will be issued under one or more existing or new bank credit agreements that will provide credit commitments that will not in the aggregate exceed $1.5 billion. Notes will mature not more than three years from the date of issuance. Paper will be sold at the dealer's discount rate *per annum* on the day of issuance for commercial paper of comparable quality and maturities. In connection with the sale of Paper, Entergy may incur repayment obligations related to letters of credit obtained from one or more banks in support of its Paper obligations. The effective cost of money on Short-Term Debt will not exceed 500 basis points over LIBOR for the relevant interest rate period.

Entergy states that Interest Rate Hedges will only be entered into with counterparties whose senior debt ratings, or whose parent companies' senior debt ratings, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or equivalent rating from Moody's Investors' Service or Fitch Investor Service (''Approved Parties''). Interest Rate Hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors, and structured notes or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations.

The transactions will be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Entergy will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Entergy asserts that Anticipatory Hedges will only be entered into with Approved Parties to fix and/or limit the interest rate risk associated with any new issuance through: (1) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a ''Forward Sale''); (2) the purchase of put options on U.S. Treasury obligations (''Put Options Purchase''); (3) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (''Zero Cost Collar''); (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (5) some combination of a Forward Sale, Put

[1] By order dated February 26, 1997 (HCAR No. 26674), (''February 1997 Order''), Entergy was authorized to issue and sell notes to banks in an outstanding principal amount of up to $500 million, through December 31, 2002.

[2] By prior Commission order dated December 15, 2000 (HCAR No. 27300), Entergy was authorized to issue and sell up to 30 million shares of its common stock, through June 30, 2006, under its Dividend Reinvestment and Stock Purchase Plan (''Order''). Entergy proposes that the authority to sell common stock requested in this matter be in addition to the authority granted in the Order.

Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, options, caps and collars, appropriate for the Anticipatory Hedges.

Entergy represents that each Interest Rate Hedge and Anticipatory Hedge will qualify for hedge accounting treatment under generally accepted accounting principles. Entergy will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions.

Entergy states that the Financing Subsidiaries will be organized for the specific purpose of financing the system's authorized and exempt investment activities. It proposes to use the proceeds from the sale of trust preferred stock, preferred or equity-linked securities and Long-Term Debt to pay dividends, including dividends out of capital, to Entergy, to make loans to Entergy and to otherwise transfer the financing proceeds to, or as directed by, Entergy.[3] Entergy also proposes to guarantee, provide support for or enter into expense agreements in respect to the obligations of any Financing Subsidiary. The amount of any Long-Term Debt or preferred securities issued by any Financing Subsidiary will be counted against the Capital Limitation, to the extent that Entergy guarantees those securities.

Entergy Louisiana, Inc. (70–7580)

Entergy Louisiana, Inc. (''Entergy Louisiana''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment to its application under sections 9(a) and 10 of the Act and rule 54 under the Act.

By prior Commission orders dated February 2, 1989, January 24, 1991, January 24, 1996, and October 15, 1999 (HCAR Nos. 24810, 25246, 26460, and 27087, respectively) (''Prior Orders''), Entergy Louisiana was authorized to enter into and amend a Fuel Lease dated January 31, 1989 (''Lease''), with River Fuel Company # 2, Inc. (''River Fuel''), under which Entergy Louisiana leases nuclear fuel required for use at its Waterford 3 nuclear generating unit (''Waterford 3''). Under the terms of the Lease, River Fuel makes payments to suppliers, processors, and manufacturers necessary to provide nuclear fuel for Waterford 3, or Entergy Louisiana makes these payments and receives reimbursement from River Fuel. Entergy Louisiana is required to make rental payments in amounts necessary for River Fuel to meet its debt service requirements and other expenses.

In accordance with the terms of the Prior Orders, Entergy Louisiana consented to allow River Fuel to finance the acquisition of nuclear fuel through: (a) Revolving credit borrowings and/or the issuance of commercial paper pursuant to an Amended and Restated Credit Agreement, dated November 19, 1999 (the ''1999 Credit Agreement''), with the Bank of New York, as agent, and various other lenders; and (b) the issuance and sale of intermediate term secured notes to institutional investors. The commercial paper issued under the 1999 Credit Agreement is supported by irrevocable direct-pay letters of credit issued by the lenders. The Prior Orders further provide that River Fuel's combined obligations under its credit facility and its outstanding intermediate term secured notes may at no time exceed $160 million.

In accordance with the Prior Orders, River Fuel is currently authorized to pay interest under the 1999 Credit Agreement: (a) In the case of base rate borrowings, at a maximum rate equal to the higher of (i) the prime rate in effect on the date of the borrowings, and (ii) the sum of 1% per annum and the Federal Funds Rate in effect on the date of the borrowings, and (ii) the sum of 1% per annum and the Federal Funds Rate in effect on the date of the borrowings; and (b) in the case of borrowings based on the London Interbank Offered Rate (''LIBOR''), a maximum rate of interest equal to 2% per annum above LIBOR.

Also, in accordance with the Prior Orders River Fuel is currently authorized to pay the following fees under the 1999 Credit Agreement: (1) A maximum letter of credit fee of 1% per annum on the average aggregate face amount of commercial paper outstanding during each quarter that Entergy Louisiana's senior debt is investment grade, and 1⅞ per annum on the average aggregate face amount of commercial paper outstanding during each quarter that Entergy Louisiana's senior debt is not investment grade; (2) a maximum commitment fee of ¼ of 1% per annum on the difference between the maximum commitment under the 1999 Credit Agreement and the average daily amount of commercial paper and revolving credit loans outstanding under the 1999 Credit Agreement during each quarter, and (3) a maximum administrative fee of $10,000 per annum.

The Lease prohibits River Fuel from amending the 1999 Credit Agreement or entering into any successor credit agreement without Entergy Louisiana's consent. Due to changes in the credit markets that have occurred since the execution of the 1999 Credit Agreement Entergy Louisiana now proposes to consent to the execution by River Fuel of a new credit agreement and any successor credit agreements.

Specifically, Energy Louisiana proposes to consent to the execution by River Fuel of a new credit agreement, and any successor credit agreements, with loans bearing interest at rates not in excess of those rates generally obtainable at the time for loans having the same or reasonably similar maturities, obtained by companies of the same or reasonably comparable credit quality and having reasonably similar terms, conditions, and features.

Further, Entergy Louisiana proposes to consent to the payment by River Fuel of: (1) A maximum letter of credit of 5% per annum on the average aggregate face amount of commercial paper outstanding during each quarter, with the specific amount of such fee to be determined based upon Entergy Louisiana's senior debt rating; (2) a maximum commitment fee of 2% per annum on the difference between the maximum commitment under the new credit agreement and the average daily amount of commercial paper and revolving credit loans outstanding under the agreement during each quarter; (3) a maximum administrative fee of $50,000 per annum; and (4) maximum one-time closing fees of $1,500,000, consisting of up-front fees, arrangement fees, administrative agency fees and such other closing fees as are customary in connection with similar credit agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1652 Filed 1–19–01; 8:45 am]

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[3] *See* Southern Company, Holding Co. Act Release No. 27134 (February 9, 2000).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43840; File No. SR–BSE–00–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Fee Schedule

January 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2000, as amended on December 21, 2000,[3] the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its Floor Operations Fee Schedule to include a $1,000 monthly Electronic Trading Permits (''ETP'') fee charged to members for each trader trading pursuant to an ETP from a remote location.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Floor Operations Fee Schedule to include a $1,000 per month ETP fee. This fee will be charged to all members on a per trader basis (*i.e.,* member firms will be billed $1,000 per month per trader holding an ETP). The $1,000 monthly fee is based on the Exchange's analysis of the additional costs that are necessary to operate the BSE's BEACON system from a remote location including, but not limited to, reengineering the design of the Exchange's network, several up-front and ongoing software reprogramming and enhancement efforts, initial and ongoing telecommunication costs, maintenance of equipment at remote locations, hiring and training additional ''help desk'' personnel specifically for the remote locations, travel costs incurred as a result of ongoing training, system upgrades and regulatory oversight of remote locations, and the creation and updating of training manuals and documentation for remote locations.[4]

2. Statutory Basis

The basis for the proposed rule change is Section 6(b)(4) of the Act,[5] in that the proposed rule change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its member other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will become effective upon filing of Amendment No. 1 pursuant to Section 19(b)(3) of the Act[6] and subparagraph (e) of the Rule 19b-4.[7] At any time within 60 days of the filing of such amended proposed rule change, the Commission may summarily abrogate such rule change if appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number in the caption above and should be submitted by February 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1805 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See December 20, 2000 letter from John A. Boese, Assistant Vice President, Rule Development and Market Structure, BSE, to Madge Hamilton, Division of Market Regulation, Commission (Amendment No. 1). Amendment No. 1 is reflected in this release.

[4] The Exchange understands that its proposal regarding the Electronic Fee Permits (SR–BSE–00–13) to which the fee proposed herein applies is pending before the Commission. Accordingly, the fees will not go into effect until such time as the Electronic Fee Permit rule change proposal is approved, and the permits are issued. (The Commission notes that, on December 22, 2000, the Commission issued an approval order for the EFPs, SR–BSE–00–13. See Securities Exchange Act Release No. 43766 (December 22, 2000), 66 FR 822 (January 4, 2001).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3).

[7] 17 CFR 240.19b-4(e).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43839; File No. SR–CBOE–00–61]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Change the Capitalization Transfer Fee Applicable to Designated Primary Market-Makers

January 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On December 4, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On December 13, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On January 10, 2001, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposed to amend its rules regarding application of the fee for changes in ownership of Designated Primary Market Makers (''DPMs''). Below is the complete text of the proposed rule change. Proposed new text is in *italics.* Proposed deletions are in [brackets].

* * * * *

Chapter VIII—Market-Makers, Trading Crowds and Designated Primary Market-Makers

* * * * *

Transfer of DPM Appointments

Rule 8.89. (a)–(e) No change.

(f) The approval or failure to approve a proposed transfer of a DPM appointment, *and the application of the transfer fee under Interpretation .02 of this Rule to a transfer, are* [is] subject to direct review by the Board of Directors upon receipt by the Secretary of the Exchange, within ten (10) days of the time the *Board is notified of the* decision [of the MTS Committee is announced], of (i) a written request for such review made by *a person aggrieved by the decision*, specifying why the *aggrieved person* believes the decision of the Committee should be reversed or modified [(in the case of a failure to approve an application as submitted)] or (ii) a request for review made by at least five Directors of the Exchange (in any case). *For purposes of this Rule, a person must be aggrieved as described in Chapter XIX of the Exchange's rules.*

* * * Interpretations and Policies:

.01 No change.

.02 [Any DPM that is allocated, after June 29, 1999, one or more option classes traded on the Exchange prior to that date shall be subject to a transfer fee in the event of a change in the capitalization of the DPM during the five year period following the allocation of the first such option class to the DPM. For purposes of this transfer fee, a change in the capitalization of a DPM shall be deemed to include any sale, transfer, or assignment of any ownership interest in the DPM or any change in the DPM's capital structure, voting authority, or distribution of profits or losses. This transfer fee shall be equal to the larger of (i) (the applicable percentage set forth below) × (the actual dollar value of the change in capitalization of the DPM as determined by the Exchange) × (the percentage of the DPM's Market-Maker trading volume in its capacity as a DPM in the previous 12 months attributable to option classes allocated to the DPM after June 29, 1999 that were traded on the Exchange prior to that date) and (ii) (the applicable percentage set forth below) × (the current level of overall DPM profitability per contract as determined by the Exchange based on DPM financial reporting) × (the DPM's Market-Maker trading volume in the previous 12 months in option classes allocated to the DPM after June 29, 1999 that were traded on the Exchange prior to that date) × (2) × (the percentage change in the DPM's capitalization as determined by the Exchange). The applicable percentage to be used in the formulas above to determine the transfer fee to be assessed to a DPM shall be 50% in the first year of the five year period during which the DPM is subject to this transfer fee, 40% in the second year, 30% in the third year, 20% in the fourth year, and 10% in the fifth year.]

(a) Certain transfers of interest in DPM appointments that occur after October 20, 2000 shall be subject to a DPM transfer fee. The intent of the Rule is to apply a transfer fee in those instances where one or more principals in the DPM exit or significantly reduce their participation in the DPM operation. The intent of the Rule is not to assess the transfer fee to any transaction that enables a DPM to add new capital, to replace a capital partner, to merge with an existing DPM (where all pre-existing partners continue their participation in the new DPM), or that makes small changes in the ownership or profit sharing arrangement of the DPM. The MTS Committee shall determine, based on the intent of this Rule, whether the transfer fee is applicable to specific transactions.

(c) Factors to be considered in determining whether a transfer of an interest in a DPM appointment is subject to the transfer fee under this Interpretation .02 may include, but are not limited to, any one or more of the following:

*i. Is new capital being contributed to the DPM by the new principal(s)?**

ii. Are the original principals maintaining their level of capital contributions to the DPM or withdrawing capital?** If the original principals are retaining a profit allocation but are not maintaining their level of capital contributions to the DPM, have the original principals incurred financial losses with respect to their investment in the DPM?*

iii. How is the profit allocation structure changing?

*iv. What are the profit percentages allocated to the original principals in relation to the profit percentages allocated to the new principals? Are the profit percentages allocated to the new principals greater than the profit percentages allocated to the original principals?** If yes, does the difference reflect a difference in capital contributed?**

v. What are the profit percentages allocated to the principals who are active in the management of the DPM in relation to the profit percentages

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE re-designated the filing as a submission pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), rather than Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A). *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Special Counsel, Division of Market Regulation (''Division''), SEC, dated December 1, 2000 (''Amendment No. 1'').

[4] In Amendment No. 2, the CBOE confirmed that its recusal standards would apply to the procedures of the Modified Trading System (''MTS'') Committee described herein, and clarified certain portions of the text and description of the proposed rule change. *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Special Counsel, Division, SEC dated December 8, 2000 (''Amendment No. 2'').

[5] In Amendment No. 3, the CBOE amended the text of the proposed rule change to specify the formula for determining the amount of any fee imposed, and made further clarifications to the text and description of the proposed rule change. *See* letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Senior Special Counsel, Division, SEC, dated December 28, 2000 (''Amendment No. 3'').

allocated to those principals that are primarily investors in the DPM? Are the profit percentages allocated to principals who are active in management greater than the profit percentages allocated to principals who are primarily investors? Has the profit allocation split between these two categories of principals changed significantly?***

*vi. Is the purpose of a change in profit percentages to compensate a DPM employee?**

vii. What is the level of consideration that is being received by the original principals?

*viii. Has management of the DPM changed significantly?***

*ix. Will the original principals who were active in the management of the DPM continue in that role?**

An asterisk (*) next to a factor indicates that a positive response to the question posed would be a factor in favor of not imposing the transfer fee. A double asterisk (**) next to a factor indicates that a positive response to the question posed would be a factor in favor of imposing the transfer fee.

(c) The amount of the transfer fee applicable to a specific transaction shall be equal to (the total value of the consideration, as determined by the MTS Committee, to be paid to the original DPM principals prior to June 30, 2004) × (the percentage of the DPM's Market-Maker trading volume in its capacity as a DPM in the previous 12 months attributable to option classes allocated to the DPM after June 29, 1999 that were traded on the Exchange prior to that date) × (the applicable percentage set forth below.) The fee rate percentage to be applied above is: 40% during the time period until June 29, 2001; 30% during the time period from June 30, 2001 to June 29, 2002; 20% during the time period from June 30, 2002 to June 29, 2003; and 10% during the time period from June 30, 2003 to June 29, 2004. The transfer fee expires on June 30, 2004. If the transfer of interest occurs over a period of years, the fee rate percentage applied will be consistent with the year in which the transfer occurs. As an example, if the transfer of a DPM is to occur equally over three years commencing in November 2000, then the fee rate percentage applied would be 40% for the first portion of the transfer, 30% for the second portion of the transfer, and 20% for the last portion of the transfer.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1999, CBOE instituted a floor-wide DPM system and awarded the appointment of options classes to DPMs at no cost in exchange for a long-term commitment to the Exchange and a fee on subsequent changes of ownership (''transfer fee''). Currently, the transfer fee, contained in Interpretation and Policy .02 to CBOE Rule 8.89, is imposed on DPMs that undergo changes in their capitalizations during a determined five-year period.[6]

As originally proposed, the Exchange detailed three primary purposes for the transfer fee. First, it was designed to provide those who own DPMs with a significant incentive to capitalize sufficiently the DPM. Second, because the Exchange believes that the allocation of existing options classes to DPMs bestows upon them a valuable right for which they paid no consideration, the Exchange believed it would be inequitable for those DPMs to sell those rights shortly thereafter by transferring all or a portion of their interest in the DPM organization to other parties. Thus, the transfer fee was established to discourage these types of transactions, or if they were to occur, to require a significant portion of the value of the transaction to be paid to the Exchange. Finally, the transfer fee was intended to assure that DPMs maintained a long-term commitment to the Exchange.

The Exchange believes that the DPM transfer fee, as structured, is not accomplishing these primary objectives and that it may be, in fact, having an unintended effect on the ability of CBOE to attract and retain well-capitalized DPMs. Specifically, the Exchange notes that the potential application of the transfer fee may be suppressing a number of proposed transactions that could strengthen the financial resources of DPMs.[7] As originally proposed, the Exchange stated that it would consider changes to the DPM transfer fee if subsequent experience indicated that such changes were necessary and appropriate.[8] In this respect, the Exchange notes that the Exchange's MTS Committee, the Lessors Advisory Committee, and the Floor Directors Committee have evaluated the DPM transfer fee and determined to modify the transfer fee so that it accomplishes its original primary objectives.

The proposed changes are intended to permit a DPM to add new capital, to make small changes in ownership or profit sharing, to replace a capital partner, or to merge with other DPMs (where all pre-existing partners continue their participation in the new DPM), all without triggering the transfer fee. Consistent with the intent of the rule, a transfer fee would continue to be assessed in cases where one or more principals of a DPM exit[s] or significantly reduce[s] their participation in the DPM operation.

To accomplish these changes, the Exchange proposes to amend Interpretation .02 to CBOE Rule 8.89 to modify the instances in which the fee

[6] *See* Securities Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (Approval of File No. SR–CBOE–99–37) (approving current transfer fee scheme). The transfer fee generally is equivalent to an applicable percentage of the larger of: (i) (the applicable percentage set forth below) × (the actual dollar value of the change in capitalization of the DPM as determined by the Exchange) × (the percentage of the DPM's market maker trading volume in its capacity as a DPM in the previous 12 months attributable to option classes allocated to the DPM after June 29, 1999 that there traded on the Exchange prior to that date) and (ii) (the applicable percentage set forth below) × (the current level of overall DPM profitability per contract as determined by the Exchange based on DPM financial reporting) × (the DPM's market maker trading volume in the previous 12 months in option classes allocated to the DPM after June 29, 1999 that were traded on the Exchange prior to that date) × (2) × (the percentage change in the DPM's capitalization as determined by the Exchange). The applicable percentage to be used in the formulas above to determine the transfer fee to be assessed to a DPM shall be 50% in the first year of the five year period during which the DPM is subject to this transfer fee, 40% in the second year, 30% in the third year, 20% in the fourth year, and 10 percent in the fifth year.

[7] In this respect, the Exchange notes that the other options exchanges allow specialist assignments to be sold or transferred without the imposition of a fee, leaving CBOE at a competitive disadvantage. For example, on competing exchanges, specialists may take on new partners willing to make capital contributions, they may become part of larger market making organizations, or they may merge with other specialist units to combine their resources. All of these actions, which would trigger application of CBOE's DPM transfer fee, occur on other exchanges without those competing specialist units paying any transfer fee.

[8] *See* Securities Exchange Act Release No. 41872 (September 13, 1999), 64 FR 51158 (September 21, 1999) (Notice of Filing of SR–CBOE–99–37).

would be assessed. Specifically, the Interpretation would be modified to allow the MTS Committee to analyze each proposed transaction to determine whether the transfer fee should be applied. Factors to be considered in making such a determination may include, but would not be limited to, one or more of the following:

i. Is new capital being contributed to the DPM by the new principal(s)?*

ii. Are the original principals maintaining their level of capital contributions to the DPM* or withdrawing capital**? If the original principals are retaining a profit allocation but are not maintaining their level of capital contributions to the DPM, have the original principals incurred financial losses with respect to their investment in the DPM?

iii. How is the profit allocation structure changing?

iv. What are the profit percentages allocated to the original principals in relation to the profit percentages allocated to the new principals? Are the profit percentages allocated to the new principals greater than the profit percentages allocated to the original principals?** If yes, does the difference reflect a difference in capital contributed?*

v. What are the profit percentages allocated to the principals who are active in the management of the DPM in relation to the profit percentages allocated to those principals that are primarily investors in the DPM? Are the profit percentages allocated to principals who are active in management greater than the profit percentages allocated to principals who are primarily investors?* Has the profit allocation split between these two categories of principals changed significantly?**

vi. Is the purpose of a change in profit percentages to compensate a DPM employee?*

vii. What is the level of consideration that is being received by the original principals?

viii. Has management of the DPM changed significantly?**

ix. Will the original principals who were active in the management of the DPM continue in that role?*

An asterisk (*) next to a factor listed above indicates that a positive response to the question posed would be a factor in favor of not imposing the transfer fee. A double asterisk (**) next to a factor indicates that a positive response to the question posed would be a factor in favor of imposing the transfer fee.

If after its review the MTS Committee determines that the proposed transaction should be subject to the transfer fee, the MTS Committee shall impose the fee. The Exchange proposes to replace the existing formulas for determining the amount of the transfer fee with a new formula contained in Interpretation .02(c) to Rule 8.89. The amount of the transfer fee applicable to a specific transaction would be equal to: (the total value of the consideration, as determined by the MTS Committee, to be paid to the original DPM principals prior to June 30, 2004)×(the percentage of the DPM's Market-Maker trading volume in its capacity as a DPM in the previous 12 months attributable to option classes allocated to the DPM after June 29, 1999 that were traded on the Exchange prior to that date)×(the applicable percentage set forth below.) The fee rate percentage to be applied above is: 40% during the time period until June 29, 2001; 30% during the time period from June 30, 2001 to June 29, 2002; 20% during the time period from June 30, 2002 to June 29, 2003; and 10% during the time period from June 30, 2003 to June 29, 2004.[9] The transfer fee would expire on June 30, 2004.

The Exchange also proposes to amend section (f) to Rule 8.89 to create a review process relating to the application of the transfer fee. Accordingly, this provision allows a person aggrieved by the decision to appeal the MTS Committee's decision to assess the transfer fee, as well as its determination as to the amount of the fee, to the Board of Directors of the Exchange. Additionally, the proposed rule would allow the Board of Directors to call MTS Committee decisions relating to the assessment of the fee for review on the Board's own motion upon the request of five or more directors.

Finally, CBOE proposes to make the effective date of this proposal retroactive to October 20, 2000. If this proposal is not granted retroactive status, the current transfer fee structure will have been applicable to only one transaction. By making the effective date October 20, 2000, the Exchange proposes to avoid assessing a fee to a transaction that, had it occurred one month later, would not have been subject to the fee. Thus, the Exchange does not believe that the interests of fairness are served by assessing a fee to a transaction that occurred during this interim period, a period in which the Exchange already had begun discussions to amend the transfer fee structure.

The Exchange believes that the proposed changes advance the primary objectives of the DPM transfer fee, as identified above. First, the Exchange believes that the proposed changes will facilitate a DPM's ability to maintain sufficient capital to operate as a DPM by allowing it to enter into transactions that enhance its financial operating structure without automatically subjecting it to the DPM transfer fee. As the amount of the business transacted on the Exchange continues to grow, so will a DPM's capital needs. The proposed changes recognizes this and allow DPMs to respond accordingly without being subject to the transfer fee.

Second, that Exchange believes that the proposed changes also continue to ensure that a DPM maintains its long-term commitment to the Exchange. The Exchange believes that by enhancing its capital structure, a DPM is making a long-term commitment to the Exchange that it intends to operate in that capacity for an extended period. For this reason, the Exchange believes it would be counter-productive to assess a fee on those types of transactions.

Third, the Exchange believes the proposed amendments should prevent the ''quick sale'' of a DPM interest for a profit. The Exchange believes that the proposal advances this objective because it allows DPMs to enhance their capital structures without paying a transfer fee, provided that one or more principals do not exit or significantly reduce their participation in the DPM operation. If, however, the original principals do exit the business or significantly reduce their participation, they will be assessed a fee consistent with the intent of the rule. Accordingly, the proposal should continue to result in the levying of a transfer fee when a DPM tries to profit from the ''quick sale'' of its interest.

Finally, the Exchange notes that the full membership has had an opportunity to review the proposed changes. In this regard, on November 1, 2000, the Chairmen of the Floor Directors, MTS Appointments, and Lessors Advisory Committees distributed to the membership an Information Circular that discussed the changes and requested comment. To date, the Exchange has received no written comments in opposition to the amendment of the rule.[10] The

[9] If the transfer of ownership occurs over a period of years, the fee rate percentage applied will be consistent with the year in which the transfer occurs. As an example, if the transfer of a DPM is to occur equally over three years commencing in November 2000, then the fee rate percentage applied would be 40% for the first portion of the transfer, 30% for the second portion of the transfer, and 20% for the last portion of the transfer.

[10] The Exchange notes that the Chairman of the Floor Directors Committee received one comment via telephone regarding the proposed amendment.

Continued

Committees have discussed this issue in great detail and believe that the proposed changes will be beneficial to the operation of the Exchange.[11]

2. Basis

For these reasons, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and further the objectives of Section 6(b)(5)[13] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On November 1, 2000, the Chairmen of the Floor Directors, MTS Appointments, and Lessors Committees distributed to the membership an Information Circular that discussed the prescribed changes and requested comment. To date, the Exchange has received no written comments in opposition to the amendment of the rule. The Exchange notes that the Chairman of the Floor Directors Committee received, via telephone, the views of one commenter who supported abolishing the transfer fee altogether.[14] The Exchange believes the proposed amendments will enable it to achieve the original intent of the transfer fee, thereby negating the need to abolish the fee altogether. The Exchange also received a copy of a letter sent to the Commission from another commenter. This commenter opposed allowing the proposed changes to become effective on filing, and urged that they be subject to public comment and review.[15] In Amendment No. 1 to the proposed rule change, the Exchange re-designated the filing as a submission pursuant to Section 19(b)(2) of the Act.[16]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–61 and should be submitted by February 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1806 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–M

This commenter supported abolishing the transfer fee altogether. The Exchange also received a copy of a letter sent to the Commission by another commenter. This commenter opposed the filing of the proposed rule change under Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), which would have rendered it effective on filing. The commenter believed that the proposed rule change should be subject to public comment and review pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). *See* letter from Lawrence J. Blum to Jonathan G. Katz, Secretary, SEC, dated November 24, 2000. The filing was subsequently re-filed under Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). *See* Amendment No. 1, *supra* note 3.

[11] The Exchange believes the proposed changes will address the potential shortcomings of the current DPM transfer fee. However, the Exchange will continue to evaluate the fee and make changes to it in the future if such changes are deemed necessary. Any such changes would be submitted to the Commission pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 10.

[15] *See supra* note 10.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43835; File No. SR–CHX–00–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Preopening Orders

January 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2000, the Chicago Stock Exchange, Incorporated (''Exchange'' or ''CHX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the CHX. On December 20, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is published this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the CHX rule governing preopening orders in Nasdaq/NM securities to explicitly define ''preopening orders'' in Nasdaq/NM securities, and to explicitly provide for a single price opening at or better than the NBBO at the first unlocked, uncrossed market.

Below is the text of the proposed rule change. Proposed new language is in *italics* and proposed deletions are in brackets.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy, J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 20, 2000 (''Amendment No. 1''). In Amendment No. 1, the CHX clarified the rule text to reflect that the 8:25 a.m. cutoff time for preopening orders is ''Central Time''.

Chicago Stock Exchange Rules

Article XX, Rule 37(a)

* * * * *

4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trade price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled [at the Exchange opening trade price] *on a single price opening at or better than the NBBO at the first unlocked, uncrossed market.* In trading halt situations, order will be executed based on the Exchange reopening price. For purposes of this rule, (*a*) pre-opening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote *and (b) preopening orders in NASDAQ/NM securities are orders received at or prior to 8:25 a.m. (Central Time) on the date of the opening.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any concerns it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis of, the Proposed Rule Change

1. Purpose

The Exchange proposed to amend the CHX rule governing preopening orders in Nasdaq/NM securities to provide for additional clarity regarding the types of orders eligible for treatment as preopening orders and te price at which such orders will be filled. Because Article XX, Rule 37(a)(4) of the Exchange's rules does not explicitly define what constitutes a preopening order in the case of Nasdaq/NM securities, there has been some confusion as to which orders are eligible for treatment as preopening orders, and consequently, some unintended execution guarantees. The proposed rule change will expressly provide that for an order to be considered a preopening order, an order must be received at or prior to 8:25 a.m. (Central Time) of the date of the opening.

The Exchange also proposed to provide additional clarity regarding the price at which each preopening order will be filled. Currently, the rule provides that preopening orders for Nasdaq/NM securities must be filled ''at the Exchange opening trade price.'' The Exchange believes that it is in the best interest of its order-sending firms and their customers to provide for greater specificity as to the parameters governing the fill price for preopening orders. Accordingly, the proposed rule change provides that each preopening order must be filled ''on a single price opening at or better than the NBBO at the first unlocked, uncrossed market.''

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder, that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[4] In particular, the proposed rule is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–00–31 and should be submitted by February 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1749 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43841; File No. SR–CTA–01–01]

Consolidated Tape Association; Notice of Filing Seventh Charges Amendment to the Second Restatement of the CTA Plan

January 12, 2001.

Pursuant to Rule 11Aa3–2 [1] of the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on January 9, 2001, the Consolidated Tape Association Plan (''CTA Plan'') participants (''Participants'') [2] filed with

[1] 17 CFR 240.11Aa3–2.

[2] Each participant of the Plan executed the amendments. The Participants include the American Stock Exchange, LLC, Boston Stock

Continued

the Securities and Exchange Commission (''Commission'' or ''SEC'') an amendment to the Second Restatement of the CTA Plan. In the amendment, the Participants propose to modify the Network B ticker charges.

The Participants submitted this notice of proposed amendment to the CTA Plan, which is an effective national system plan,[3] pursuant to Rule 11Aa3–2(c)(1).[4] The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2 [5]

Currently, CTA Network B charges $21.50 per month for the first ticker at each customer location and $13.60 for any additional tickers at that location. This tiered pricing structure is proving difficult for market data vendors to administer in the new vendor billing environment that was recently implemented by CTA Network B.[6]

To address this problem, CTA Network B is proposing to eliminate the ''First Ticker'' premium charge. Thus, there would be a single monthly ticker charge of $13.60 for each customer at each location. The change would result is a cost savings for all Network B ticker subscribers and will make it easier for vendors to charge for the data.

* * * * *

The filing of the amendment is in fulfillment of the national market system objectives regarding the dissemination of market information as anticipated by Sections 11A(a)(1)(C),[7] 11A(a)(1)(D),[8] and 11A(a)(3)(B) [9] of the Act.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendment to the CTA rate schedule by executing the amendment. The rate change would become effective on the first day of the month that follows the month in which the Commission approves the proposed plan amendment.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The Participants believe that the proposed amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the proposed plan amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) [10] of the Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance With Plan

In accordance with Section XII(b)(iii) of the CTA Plan, each Participant has approved the fee reduction.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A).

J. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) and the text of the amendment.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 [11]

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

See Item I(A).

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposal between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to File No. SR–CTA–01–01 and should be submitted by February 12, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1804 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–m

Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.

[3] The CTA Plan has been designated as an effective transaction reporting plan pursuant to Rule 11Aa3–1(b). 17 CFR 240.11Aa3–1(b).

[4] 17 CFR 240.11Aa3–2(c)(1).

[5] 17 CFR 240.11Aa3–2.

[6] *See* Securities Exchange Act Release No. 42444 (February 18, 2000), 65 FR 11101 (March 1, 2000).

[7] 15 U.S.C. 78k–1(a)(1)(C).

[8] 15 U.S.C. 78k–1(a)(1)(D).

[9] 15 U.S.C. 78k–1(a)(3)(B).

[10] 15 U.S.C. 78k–1(c)(1)(D).

[11] 17 CFR 240.11 Aa3–1.

[12] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43834; File No. SR–NYSE–00–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to an Interpretation with Respect to Rule 342 (''Offices—Approval, Supervision, and Control'')

January 10, 2001.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of interpretations with respect to the meaning administration of existing NYSE Rule 342 (''Offices—Approval, Supervision, and Control'') with respect to the supervision of, and the experience requirements for, registered representatives working in small or residence branch offices. The text of the proposed rule change is available from the Office of the Secretary, the NYSE or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend interpretations concerning the meaning and administration of NYSE Rule 342 with respect to the supervision of, and the experience requirements for, registered representatives working in small or residence branch offices of Exchange member organizations. Interpretation will be published as an Interpretation Memorandum for inclusion in the Exchange's *Interpretation Handbook.*

NYSE Rule 342 requires that each office, department and business activity be under the supervision and control of the member organization establishing it and of the personnel delegated such authority and responsibility. Additionally, the structure and administration of Exchange rules mandate that all member organization employees, including registered representatives, be fully subject to the direct and ongoing supervision, control and discipline of their member organization employers. Further, Exchange Rule 342(c) requires that a member or member organization obtain the Exchange's prior written consent for each office established.

NYSE Rule 342.11 and Current Interpretations. NYSE Rule 342.11 provides that a registered representative (''RR'') may operate out of his or her residence, with Exchange approval, and that if the residence is advertised (through, *e.g.,* business cards or stationery), then the residence constitutes a branch office of the member organization employer. Further, and notwithstanding the above, Interpretation/01 to Rule 342.11 in the NYSE Interpretation Handbook states that if an RR regularly operates from his home during business hours (even on a part-time basis), the member organization employer must register the home as a branch office (a ''residence office''). Interpretation/03 to Rule 342.11 currently provides that an RR who will be working from his or her residence must have a minimum of six-months securities experience prior to being approved in a residence office.

Proposed Amendment to Interpretation/03 to Rule 342.11. The six-months securities industry experience requirement for RRs in residence offices has come to be viewed as unnecessary and restrictive in that member organizations are prohibited from permitting the RR from working for two additional months *beyond* the prescribed four-month training period of NYSE Rule 345. This six-month experience requirement has particularly affected member organizations structured with multiple one-person offices.

The additional training period for inexperience RRs was appropriate when the interpretation was implemented in the 1970s because of the remote physical location of supervisors. However now, with member organizations increasingly employing advanced technology and electronic communications in the supervision and review of RR activities, supervision can be readily performed without being dependent on close physical proximity of the manager to the RR.

Under the proposed amended Interpretation, the six-month experience requirement will be eliminated, thereby allowing the RR who operates from a residence or one-person office to begin working upon completion of the prescribed four-month training period, provided that the member organization develops and implements special supervisory procedures for heightened supervision for the two month period immediately following completion of prescribed training. The special supervision will include procedures such as:

- Daily review of all customer account activity;
- Daily review of all correspondence including prior approval of all outgoing correspondence;
- Review of all incoming and outgoing electronic communications, *e.g.,* internet use and electronic mail; and
- On-site inspection by the branch office manager (or qualified designee) responsible for supervision of the residence office in the two months following the prescribed training period.

Member organizations will be required to inform RRs operating from a residence or small one-person office of the special supervision, and to maintain records evidencing the implementation and conduct of the special supervision.

The amended interpretation will allow these RRs to begin working immediately after completing the prescribed four-month training period (like all other RRs), while also helping to ensure that, through special supervision, member organizations have appropriate supervision and control of RRs operating from a residence and their customer accounts. Moreover, while the special supervision is required for a limited time, there is the *ongoing* responsibility of the member organizations, beyond the two-month special supervision period, to have

appropriate policies and procedures in place for the supervision and control of all sales and operational activities of each branch office and of all registered employees and the customer accounts they service.

Proposed Amendments to Interpretations /01,/02, and a New Interpretation /04 to NYSE Rule 342.15. Generally, each location where member organization employees are engaged in activities on behalf on a member organization must be registered as a branch office (excluding locations on the Exchange Floor where member organizations conduct Floor Business).

A ''small'' office is a branch with three or less registered representatives, one of whom is designated as ''RR-in-charge'' (this designation is required only if there is more than one registered representative in the small office). A small office may engage in sales activities but may not conduct operational functions, such as cashiering (receipt and disbursement of funds and securities).

Interpretation /02 to NYSE Rule 342.15 currently requires small offices to be under the close supervision and control of the member organization's main office or to be supervised by a manager of another office within short travel distance. Such manager may be responsible for only two small offices.

The proposed amendments to the Interpretation will require that small offices be controlled and supervised by *either* the main office *or* another designated branch office having a qualified (*i.e.,* Series 9 and 10 exam-qualified) Branch Office Manager on the premises. Further, such supervisory arrangements must be made part of the member organization's written plan of supervision. Adoption of the interpretation will eliminate the current provision under Interpretation /01 to NYSE rule 342.15 that a manager may be responsible for only two small offices that are in close geographical proximity. Given modern electronic surveillance and monitoring techniques, this limitation regarding number of offices and geographical location is no longer necessary. New Interpretation /04 to NYSE Rule 342.15 provides that RRs operating from small, one-person branch offices must be subject to the same special supervision prescribed in Interpretation /03 to NYSE Rule 342.11 for residence offices.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5)[3] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, in that it will enhance the process for member organization supervision and control of small and residence branch offices, while also permitting registered representatives to engage in activities upon completion of a prescribed training period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement in Comments on the Proposed Rule Change Received From Members, Participants or Other

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–58 and should be submitted by February 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1750 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43838; File No. SR–NYSE–00–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. To Permit Firm Delivery of the Regulatory Element of the Continuing Education Program

January 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2000, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 21, 2000, the NYSE amended the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposal consists of interpretations with respect to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* December 20, 2000 letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC (''Amendment No. 1''). In Amendment No. 1, the NYSE requested accelerated approval of the proposed rule change, and made minor, non-substantive corrections to Exhibit A to the proposed rule change.

meaning and administration of NYSE Rule 345A (''Continuing Education for Registered Persons''), to permit firm delivery of the Regulatory Element of the Continuing Education Program. Currently, this computer-based training is administered to registered persons by an outside vendor at its locations. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

Rule 345A Continuing Education for Registered Persons

(a) Regulatory Element

/01 Registration Date

Registered persons are required to participate in the Regulatory Element [on three occasions] *on the occurrence of their second registration anniversary date and every three years thereafter,* based on their initial registration anniversary date. Initial registration means the first date that the person became registered with the NYSE, NASD or another self-regulatory organization, regardless of subsequent registrations, provided that the person has remained continuously registered since that initial date.

A person's initial registration date is the date that the registration was originally approved rather than the date the person passed a qualification examination. This includes registered persons who have received waivers from specific examination requirements.

/02 Application

The requirements of the Regulatory Element apply to all persons registered or required to be registered under Exchange rules, even if such persons are not required to be qualified by taking and passing an examination e.g., certain allied members and securities lending representatives.

/03 Firm Delivery of Regulatory Element

Members and member organizations will be permitted to administer the Regulatory Element continuing education program to their registered persons by instituting a firm program acceptable to the Exchange.

The following procedures are required:

A. Senior Officer or Partner In-Charge

• *The firm has designated a senior officer or partner to be responsible for the firm's delivery of the Regulatory Element continuing education program.*

B. Site Requirements.

• *The location of all delivery sites will be under the control of the firm.*

• *Delivery of Regulatory Element continuing education will take place in an environment conducive to training. (Examples: a training facility, conference room or other area dedicated to this purpose would be appropriate. Inappropriate locations would include a personal office or any location that is not or cannot be secured from traffic and interruptions).*

• *Where multiple delivery terminals are placed in a room, adequate separation between terminals will be maintained.*

C. Technology Requirements

• *The communication links and firm delivery computer hardware must comply with standards defined by the Exchange or its designated vendor.*

D. Supervision

• *The firm's Written Supervisory Procedures must contain the procedures implemented to comply with the requirements of its delivery of Regulatory Element continuing education.*

• *The firm's Written Supervisory Procedures must identify the senior officer or partner designated pursuant to 03/A and contain a list of individuals authorized by the firm to serve as proctors.*

• *Firm locations for delivery of Regulatory Element continuing education will be specifically listed in the firm's Written Supervisory Procedures.*

E. Proctors

• *All sessions will be proctored by an authorized person during the entire Regulatory Element continuing education session. Proctors must be present in the session room or must be able to view the person(s) sitting for Regulatory Element continuing education through a window or by video monitor.*

• *The individual responsible for proctoring at each administration will sign a certification that required procedures have been followed, that no material from Regulatory Element continuing education has been reproduced, and that no candidate received any assistance to complete the session. Such certification may be a part of the sign-in log required under F. Administration.*

• *Individuals serving as proctors must be persons registered with an SRO and supervised by the designated senior officer/partner for purposes of firm delivery of the Regulatory Element continuing education.*

• *Proctors will check and verify the identification of all individuals taking Regulatory Element continuing education.*

F. Administration

• *All appointments will be scheduled in advance using the procedures and software specified by the Exchange, its agent or designated vendor to communicate with the PROCTOR system and CRD.*

• *The firm/proctor will conduct each session in accordance with the administrative and appointment scheduling procedures required by the Exchange or its designated vendor.*

• *A sign-in log will be maintained at the delivery facility. Logs will contain the date of each session, the name and social security number of the individual taking the session, that required identification was checked, the sign-in time, the sign-out time and the name of the individual proctoring the session. Such logs are required to be retained pursuant to SEA Rule 17a–4.*

• *No material will be permitted to be utilized for the session nor may any session-related material be removed.*

• *Delivery sites will be made available for inspection by the SROs.*

Before commencing firm delivery of Regulatory Element continuing education, members and member organizations are required to file with their Designated Examining Authority (''DEA''), a letter of attestation (as specified below) signed by a senior officer or partner attesting to the establishment of required procedures addressing senior officer/partner in-charge, supervision, site, technology, proctors and administrative requirements.

The letter of attestation shall read substantially as follows:

(Name of member or member organization) has established procedures for delivering Regulatory Element continuing education on its premises. I have determined that these procedures are reasonably designed to comply with SRO requirements pertaining to firm delivery of Regulatory Element continuing education including that such procedures have been implemented to comply with senior officer/partner in-charge, supervision, site, technology, proctors and administrative requirements.

_____

Signature

_____

Printed Name

_____

Title (Must be signed by a Senior Officer/ Partner of the firm.)

_____

Date

G. Annual Representation

Each member and member organization will be required to represent to the Exchange, annually, that they have continued to maintain, and reasonably believe that they have complied with, all required procedures outlined in sections A through F of this interpretation for the previous year. Such attestation must be signed by a senior officer or partner.

H. Definition of Senior Officer or Partner

For purposes of interpretation /03, a ''senior officer or partner'' means the chief executive officer or managing partner or either (A) any other officer or partner who is a member of the member organization's executive or management committee or its equivalent committee or group or (B) if the member organization has no such committee or group, any officer or partner having senior executive or management responsibility who reports directly to the chief executive officer or managing partner. If, in the case of a member organization, its chief executive officer or managing partner does not sign the attestation, a copy of the attestation shall be provided to the chief executive officer or managing partner.

[/03] */04 Registration Lapses*

A person whose registration lapsed for less than two years and who seeks to be reregistered will be required to participate in the Regulatory Element to cover [the] any occasion[s] that [were] was missed during the period in which the person was unregistered, based on such person's initial registration date. [For example, a person whose registration lapses four and a half years after initial registration and thereafter wants to reactivate the registration six years after the initial registration date, must satisfy the fifth-year anniversary Regulatory Element before they may function under the new registration.]

If any such person has been unregistered for more than two years, then such person would be a new registrant and required to satisfy appropriate qualifying examination requirements and satisfy the requirements of the Regulatory Element *based on the new initial registration anniversary* [beginning a new 10-year cycle (*e.g.,* 2, 5 and 10 year anniversaries of reregistration)].

[/04] *05 CRD Notification*

Members and member organizations will be notified by the Central Registration Depository (''CRD'') concerning those registered persons in the CRD system whose registration anniversary dates trigger participation in the Regulatory Element computer-based training.

Even though notification will be provided by CRD as a courtesy, the final responsibility to ensure timely participation in and completion of the Regulatory Element as required is that of members and member organizations, and registered personnel themselves.

Members and member organizations and personnel who receive such notices from the CRD but would otherwise be exempt from the requirements of the Regulatory Element because their business is limited solely to the transaction of business on the Floor with members or registered broker-dealers must contact the Exchange's Qualifications and Registrations Department to confirm that they are (by definition) exempt from the Regulatory Element. *However, any such persons who do not conduct public business on the Floor, but maintain a registration (e.g. Series #7 or 7A) that would enable them to conduct a public business, must satisfy the Regulatory Element requirements in order for their registration to remain active.*

[Members and member organizations whose registered personnel are *not* on the CRD system and therefore will not receive CRD notification, are responsible for tracking the registration anniversary dates and contacting the Exchange's Qualifications and Registration Department to make appointments for computer-based training sessions for such persons.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit firm delivery of the Regulatory Element of the Continuing Education Program.

Background

The Continuing Education Program is designed to keep industry participants up to date on products, services and rules, and is composed of a Regulatory Element and a Firm Element. The Regulatory Element is computer-based training that covers ethical, sales practice, and regulatory matters, and requires that each registered person complete this training on the occurrence of their second registration anniversary date and every three years thereafter. A registered person who fails to complete the training will be deemed inactive, and may not conduct or be compensated for activities requiring registration. The Firm Element requires member and member organizations to provide to registered employees having direct contact with customers ongoing training that is specifically tailored to their business.

Proposed Amended Interpretation of Rule 345A

At the recommendation of the Securities Industry/Regulatory Council on Continuing Education,[4] the Exchange proposes to adopt interpretations of NYSE Rule 345A to permit members and member organizations to administer the Regulatory Element of the Continuing Education Program to their registered persons by instituting firm programs acceptable to the Exchange. Currently, the Regulatory Element is administered only at vendor locations.

Under the proposal, before beginning firm delivery of the Regulatory Element, members and member organizations are required to develop stipulated procedures relating to the delivery of the program and to file with their Designated Examining Authority (''DEA'') a letter of attestation signed by a senior officer or partner attesting to the establishment of those required procedures. The stipulated procedures and letter of attestation must address the

[4] The Securities Industry/Regulatory Council on Continuing Education is comprised of representatives from broker/dealers and SROs whose duties include recommending and helping to develop specific content and questions for the Regulatory Element, as well as minimum core curricula for the Firm Element. The Council has developed a model under which firms may deliver the computer-based training in-house.

designation of a senior officer/partner in charge, supervision, delivery site, technology, proctors and administrative requirements. In addition, members and member organizations will be required to file with the Exchange annually an attestation that they have continued to maintain and reasonably believe that they have adhered to all required procedures for the previous year.

In-house delivery of the Regulatory Element will, for the practical purposes of tracking participation by registered category representatives and the aggregate performance by firm and registration category, adhere to the same standards as if it was administered at vendor locations.

Additional amendments to the Interpretation of NYSE rule 345A reflect previous changes to the Rule that require registered persons to complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter (see Interpretation paragraphs /01 and /04).[5]

Further, paragraph /05 will be amended to delete the provision addressing members and member organizations whose personnel are not included in the CRD system. After November 13, 2000, all member organization personnel will be included in the CRD database and will be tracked for continuing education training purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange in general, and in particular, with the requirements of Section 6(b)(5).[6] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest.

The NYSE believes the proposed rule change is also consistent with Section 6(c)(3)(B) of the Act.[7] Under Section 6(c)(3)(B), it is the Exchange's responsibility to prescribe standards for training, experience and competence for persons associated with Exchange members and member organizations. The Exchange has proposed this rule change to establish an additional mechanism for the administration of the Regulatory Element of the Continuing Education Program, which will enable registered persons to satisfy their continuing education obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–00–55 and should be submitted by February 12, 2001.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the NYSE's proposed rule change and Amendment No. 1, and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act[10] because it should facilitate compliance with the Regulatory Element of the Continuing Education Program. Under this proposal, firms will be able to deliver the Regulatory Element to their employees in-house. The Commission is satisfied that the proposal provides reasonable safeguards to uphold the integrity of the program, consistent with the requirements specified by the Securities Industry/Regulatory Council.

The Commission also finds the proposal is consistent with Section 6(c)(3)(B) of the Act,[11] because the proposal provides an additional mechanism for the administration of the Regulatory Element of the Continuing Education Program, which should make it easier for registered persons to satisfy their continuing education obligations.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the proposed is very similar to SR–NASD–00–64, which the Commission approved after the proposal was published for a full 21-day notice and comment period.[12] Approving this proposal will allow NYSE firms to take advantage of the in-house delivery option, which NASD member firms are

[5] The NYSE modified continuing education requirements for registered persons in 1998. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order approving proposed rule changes by the Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., and NYSE). At that time, however, the NYSE did not modify the corresponding Interpretation to NYSE Rule 345A to reflect the changes made to the Rule. The instant proposal now conforms the Interpretation to the requirements of NYSE Rule 345A. Telephone conversation between Donald Van Weezel, Managing Director, Regulatory Affairs, NYSE, and Katherine England, Assistant Director, Division, SEC, and Joseph Morra, Special Counsel, Division, SEC, January 11, 2001.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(c)(3)(B).

[8] 15 U.S.C. 78f.

[9] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(c)(3)(B).

[12] *See* Securities Exchange Act Release No. 43701 (December 11, 2000), 65 FR 79143 (December 18, 2000) (Order approving in-firm delivery of the Regulatory Element of the Continuing Education Requirements). The NASD proposal received one comment letter in support of the proposal, and none in opposition. The only substantive difference between the NASD in-firm delivery rules and the NYSE proposal is the NYSE requires an annual representation that each member and member organization has continued to maintain and comply with all required procedures regarding firm delivery of the Regulatory Element for the previous year. The NASD rules require a one-time attestation. Conversation between Mary Ann Furlong, NYSE, and Joseph P. Morra, Special Counsel, Division, SEC, December 12, 2000.

already able to do. Additionally, approval of this proposal will conform the Interpretation to Rule 345A to the requirements of NYSE Rule 345A, which Rule was amended in 1998. The Commission finds, therefore, that granting accelerated approval of the proposed rule change, as amended, is appropriate and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of Act,[13] that the proposed rule change (SR–NYSE–00–55), as amended, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Johnathan G. Katz,

Secretary.

[FR Doc. 01–1803 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43837; File No. SR–OCC–00–12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Creation of a Program to Relieve Strains on Clearing Members' Liquidity in Connection With Exercise Settlements

January 12, 2001.

On November 27, 2000, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on January 8, 2001 amended, a proposed rule change (File No. SR–OCC–00–12) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 28, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

Description

1. Background

Under the Third Amended and Restated Options Exercise Settlement Agreement (the ''Accord'') dated February 16, 1995, between OCC and the National Securities Clearing Corporation (''NSCC''), OCC and NSCC each guarantee that if the other sustains a loss on liquidation of a common member[3] with pending settlement activity at NSCC resulting from option exercises and assignments, it will make a payment to the other in an amount (which may be zero) determined by a formula set forth in the Accord.[4]

Under the Accord, NSCC has until 6:00 a.m. Central Time on the day after an option exercise settlement date (E+4) to notify OCC that it has ceased to act or may cease to act for a common member. If NSCC fails to give such notice by that time, OCC is released from its guarantee obligation with respect to transactions for which E+3 was the settlement date. Because OCC is not released from its guarantee obligation until the morning of E+4, it must continue to hold margin on assignments settling on E+3 until E+4. This means that assets that a clearing member has deposited with OCC as margin for pending assignments cannot be used to settle or to finance settlement of those assignments. Instead, the clearing member must find other sources of financing, which can strain some clearing members' liquidity in months with heavy exercise and assignment activity.

2. The Rule Change

In an effort to reduce the strains on liquidity resulting from the after-the-fact release of margin on pending assignments, OCC, in conjunction with NSCC and The Depository Trust Company (''DTC''), has worked out a program to allow OCC clearing members to withdraw equity securities[5] deposited with OCC as margin and to pledge them to DTC participant lenders as collateral for loans. The proceeds of such loans will be disbursed by the lender directly to OCC and used to discharge settlement obligations of the clearing member at NSCC that were guaranteed by OCC. OCC's liability exposure to NSCC under the Accord will be correspondingly reduced as will OCC's need to continue to hold margin until E+4.

The program will work as follows:

• On the morning of E+3, a clearing member will learn from OCC the amount of the loan that it may collateralize with securities held by OCC as margin. That amount will be no less than the value assigned by OCC to such securities for margin purposes[6] and will be no more than the lesser of (i) the margin requirement for the account from which the securities were to be withdrawn[7] and (ii) the amount of OCC's guarantee exposure to NSCC (assuming that the clearing member's NSCC positions liquidated to a deficit).[8]

• The clearing member will then contact its lender and arrange for the loan. When the terms of the loan are agreed upon, the clearing member will use a new Participant Terminal System screen developed by DTC to confirm both to the lender and to OCC the amount of the loan and the quantity and description of the securities to be withdrawn from OCC and pledged to the lender as collateral. The lender and OCC will use that information to validate the loan request.

• When both the lender and OCC approve the loan, DTC will transfer the securities from a ''pledged to OCC'' field in the clearing member's DTC account to a special OCC account at DTC. From that account, the securities will be pledged to the lender against receipt of the loan proceeds. The proceeds will thus be paid directly to OCC without passing through the hands of the clearing member.

• Upon receipt in the special OCC account, the loan proceeds will automatically be paid over to NSCC for the benefit of the clearing member resulting in a corresponding reduction in OCC's guarantee exposure to NSCC under the Accord.

• At the end of the day, DTC will automatically transfer the securities from a ''pledged to lender'' field in the special OCC account to a ''pledged to

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 43755, (December 20, 2000), 65 FR 82431.

[3] The Accord also covers situations where an OCC clearing member that is not an NSCC member settles option exercises and assignments through an NSCC member.

[4] For a description of the Accord's formula, refer to Securities Exchange Act Release No. 37731 (September 26, 1996), 61 FR 51731.

[5] OCC plans to allow the use of Government securities as well once the necessary systems are developed. At December 31, 1999, OCC's margin deposits included over $36 billion in equities compared to $9 billion in Governments.

[6] For example, if the clearing member had equity securities with a market value of $10 million on deposit in an account with OCC as margin (which OCC would value at $7 million for margin purposes), the amount of the loan collateralized by those securities would have to be not less than $7 million. If the loan amount were, for example, $6 million OCC would be exchanging $7 million worth of margin for a reduction of only $6 million in its guarantee exposure to NSCC.

[7] If, in the preceding example, the margin requirement in the relevant account were only $6 million, the loan would be limited to that amount, and OCC would only release equity securities with a market value of $8.57 million ($6 million in margin value). The remaining $1.43 million of securities would be excess margin, which the clearing member would be free to withdraw and pledge separately.

[8] If, in the preceding examples, OCC's guarantee exposure to NSCC were only $5 million, the loan would be limited to that amount, and OCC would only release equity securities with a value of $7.15 million ($5 million in margin value). If the loan amount were in excess of $5 million, OCC would be releasing margin worth more than $5 million for a reduction of only $5 million in its guarantee exposure.

lender'' field in the clearing member's DTC account, leaving the clearing member in the same position as if it had been able to pledge the securities to the lender without OCC's intermediation.

Upon allowing securities to be withdrawn and pledged under the program, OCC will reduce its margin requirement in the account from which the secruties were withdrawn by an amount equal to the value assigned to the securities for margin purposes. The account will, however, be required to be fully margined the next morning.

Initially, clearing members will be permitted to withdraw and pledge securities held by OCC as margin only on settlement dates for exercises of expiring equity options. OCC may at a future date decide to make the program available on other exercise settlement dates as well.

3. Timing

Historically, the heaviest volume of option expirations and hence exercises occurs in January. In January 2000, 26,099,346 option contracts expired, accounting for 41.9% of total open interest. Open interest as of November 21, 2000, included 26,378,070 contracts expiring in January 2001 (43.2% of total open interest). OCC believes that it is important to have the new program in place in time for the January 2001 expiration to help relieve potential strains on liquidity resulting from the large volume of exercise activity expected to occur at that time.

II. Discussion

Section 17A(b)(3)(F) [9] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. For the reasons set forth below, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under the Act.

The central purpose of the rule change is to allow a clearing member to use assets that it has deposited with OCC as margin for pending assignments to settle and to finance settlement of those assignments. The rule change should relieve clearing members from the responsibility of finding other sources of financing that could strain some clearing members' liquidity in months with heavy exercise and assignment activity. The Commission believes that OCC's program by which clearing members will withdraw and pledge securities that are deposited with OCC as margin and by which OCC in return will receive loans from DTC participant lenders is a safe and acceptable method by which clearing members' will finance their settlement obligations at NSCC. Accordingly, the Commission finds that OCC's program satisfies OCC's obligations to assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirty day after publication of the notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirty day after publication of the notice of filing because accelerated approval will permit OCC to implement its program before the January 2001 expiration.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–00–12) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1653 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43836; File No. SR–PCX–00–33]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Use of Telephones on the Options Trading Floor

January 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1,2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend and codify its policy governing the use of member-owned or Exchange-owned telephones on the trading floor with respect to communications at option trading posts. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the PCX, the purpose of the proposed rule change is to expand the existing PCX policy governing the use of telephones at option trading posts to allow the receipt of orders over outside telephone lines at option trading posts. The proposed rule would generally allow for the receipt of orders directly at the post over outside telephone lines only when the order(s) is placed during *outgoing* telephone calls. Registered Exchange Market Makers, however, may transmit orders directly to the trading post.

Under the proposed rule change, the use of telephones at the option posts must comply with the requirements and conditions set forth in proposed Rule 6.2(h)(3). This proposed rule would provide that: (A) only those quotations that have been publicly disseminated pursuant to PCX Rule 6.73 may be provided over telephones at the post; (B) orders transmitted by registered Exchange Market Makers may be entered directly to the trading posts; all other orders may be entered directly to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the trading posts only during outgoing telephone calls that are initiated at the option posts; and (C) the Exchange may provide for the taping of any telephone line into the trading posts or may require Members to provide for the tape recording of a dedicated line at the posts at any time. Members and their clerks using the telephone consent to the Exchange tape recording any telephone or line. In addition, in proposed Rule 6.2(h)(5)(A), the PCX proposes to remove the current prohibition against Floor Brokers' use of cellular or cordless phones to make calls to persons located off the trading floor. Under the proposed revision, Floor Brokers will have the same ability to use cellular and cordless phones that PCX Market Makers and Lead Market Makers now have, except that Floor Brokers can accept orders only in outgoing calls initiated at the option post.

The Exchange believes that this proposed expansion of the Exchange's telephone policy at option posts is consistent with the recommendation of the Options Floor Trading Committee (OFTC), which oversees trading at the option posts. According to PCX, easing the current policy would enable the Exchange to provide more efficient access to its trading crowds and customers, increase the speed of the transmittal of orders and the execution of trades, and satisfy customers in an increasingly competitive environment.[3]

The Exchange intends to police compliance with the conditions applicable to the use of telephones at the option trading posts through oversight by and review of complaints from Exchange members at the trading post, as well as observations of Floor Officials and Exchange staff. Further, the Exchange represents that any individual member or associated person receiving orders over outside telephone lines must be properly qualified under Exchange rules.

The Exchange further indicates that the OFTC will be responsible for implementing this policy in conformity with Exchange rules and the Act. The OFTC will approve access, approve the phone technology, and decide any other issues relating to this policy.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[4] of the Act in that it is designed to improve communications to and from the Exchange's trading floor in a manner that promotes just and equitable principles of trade, prevents fraudulent and manipulative acts and practices, and maintains fair and orderly markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–00–33 and should be submitted by February 12, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed the PCX's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with Sections 6(b)(5) and 6(b)(8) of the Act.[6] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.[7] Section 6(b)(5) also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission finds that the proposed rule, which would expand the PCX's policy regarding the use of telephones on its options trading floor by permitting the receipt of off-floor orders over outside telephone lines directly at the equity trading posts during outgoing telephone calls, is consistent with Section 6(b)(5)[8] of the Act in that it is designed to improve communication to and from the Exchange's trading floor in a manner that is consistent with Section 6(b)(5)'s objectives of promotion of just and equitable principles of trade, prevention of fraudulent and manipulative acts and practices, and maintenance of fair and orderly markets. The Commission believes that it is reasonable for PCX to permit PCX Market Makers to send orders to the trading floor via incoming calls, a policy which allows these market makers to transmit their orders more efficiently at those times when they are required to be off the floor. In the Commission's view, it is also reasonable for the Exchange to now allow orders from any other source to go directly to the post as long as those orders are placed in outgoing calls only.

The Commission further finds that the proposed rule change modifies the PCX's communication system in a way that provides for equitable access to the Exchange floor among members, broker-dealers, non-broker-dealers, and public customers alike.[9] Accordingly, the

[3] *See* Securities Exchange Act Release No. 43194 (August 22, 2000), 65 FR 52457 (SR–CBOE–00–04).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5) and (b)(8).

[7] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] The PCX represents, and the Commission notes, that Floor Brokers at the PCX can only receive orders from other broker-dealer member firms, unless they have registered their individual memberships with a member organization approved to transact business with the public, in which case these Floor Brokers would have to be Series 7 qualified, among other requirements. *See* PCX Rule 6.43. Telephone conversation among Michael Pierson, Director, Regulatory Policy, PCX, Cindy Sink, Senior Attorney, PCX, and Geoffrey Pemble,

Commission finds that the proposal is consistent with the requirement of Section 6(b)(8)[10] that the proposed rule change not impose a burden on competition that is not necessary or appropriate in furtherance of the Act's purpose.

The Exchange has indicated that it intends to police compliance with the conditions applicable to the use of telephones at the equity trading posts through complaints from Exchange members at the post, as well as observations of Floor Officials and Exchange staff. The Exchange has further indicated that the OFTC will be responsible for implementing this policy in conformity with Exchange Rules and the Act, including approving access and the phone technology, and will decide any other issues relating to this policy.[11] The Commission finds that these proposed means of surveillance are consistent with prevention of fraudulent and manipulative acts and practices, as required by Section 6(b)(5).

For these reasons, the Commission finds good cause for approving the proposed rule change (SR–PCX–00–33) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notes that PCX's proposal is virtually identical to a proposed rule change by CBOE (SR–CBOE–00–04) that was recently approved by the Commission.[12]

The Commission believes that proper surveillance is an essential component of any policy governing telephone access to an exchange's trading floor. Especially important in this case is ensuring that the PCX's surveillance efforts prevent individuals who are not properly qualified to take public orders for securities (*i.e.,* non-Series 7 registered Exchange employees) from interacting with the public. The Commission finds that the safeguards proposed above by the PCX are consistent with the prevention of fraudulent and manipulative acts and practices, as required under Section 6(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–00–33) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–1802 Filed 1–19–01; 8:45 am]

BILLING CODE 8010–01–M

Attorney, Division of Market Regulation, SEC (December 1, 2000).

[10] 15 U.S.C. 78f(b)(8).

[11] Under this proposal, PCX Floor Brokers now will be able to receive telephone orders via personal or Exchange-owned cellular or cordless telephones (pursuant to proposed Rule 6.2(h)(5)(A)). The PCX represents, and the Commission notes, that surveillance of such telephone usage will be accomplished through the record-maintenance requirements in PCX Rule 6.2(h)(9), which would require members to maintain cellular or cordless phone records for at least one year and give the Exchange the authority to inspect such records. Telephone conversation between Cindy Sink, Senior Attorney, PCX, and Geoffrey Pemble, Attorney, Division of Market Regulation, SEC (November 30, 2000).

[12] *See* Securities Exchange Act Release No. 43493 (October 30, 2000).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice Inviting Applications for Funding Under the Business-to-Business Learning, Investment, Networking and Collaboration (BusinessLINC) Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Invitation for Applications for Awards for FY 2001.

SUMMARY: The Administrator of the U.S. Small Business Administration (SBA) invites applications for awards for fiscal year 2001 under a grant competition supported by § 102 of Public Law No. 106–554, BusinessLINC Grants and Cooperative Agreements (''BusinessLINC''). The statute authorizes the Administrator to enter into cooperative agreements with qualified coalitions of public and private entities to promote the growth of small businesses by matching large concerns with small concerns and creating business-to-business partnering and mentoring relationships. These BusinessLINC cooperative agreements would provide funding to qualified coalitions to: (1) Expand business-to-business relationships between large and small businesses, and (2) provide businesses with online information and a database of companies that are interested in mentor-protégé programs or community-based, statewide, or local business development programs. Coalitions may consist of public entities, private entities, or a combination of public and private entities. To qualify, the coalition must provide an amount, either in-kind or in cash, equal to the grant amount.

Subject to funding availability, SBA intends to award up to $7.0 million in appropriated funds under this notice and expects to issue up to 50 awards. SBA reserves the right to fund, in whole or in part, any, all or none of the applications submitted in response to this notice. Award amounts may vary, depending upon availability of funds (and performance for option years); however, award amounts will be at least $25,000 and no single awardee may receive more than $250,000 in a single fiscal year.

The selection criteria to be used for this competition will be provided in the application package.

DATES: The closing date for applications is March 20, 2001, 4 p.m., Eastern Standard Time (EST).

ADDRESSES: To obtain a copy of the complete application package, call Mina Bookhard at (202) 205–7080, or see the BusinessLINC Program Announcement under the ''Go To New Stuff'' icon on SBA's website at www.sba.gov.

FOR APPLICATIONS AND FURTHER INFORMATION: Questions concerning the technical aspects of this notice should be directed to Rick Mayronne at (202) 205–7736. Questions about budget or funding matters should be directed to Mina Bookhard at (202) 205–7080.

Program Authority: 15 U.S.C. § 637(n).

Dated: January 12, 2001.

Aida Alvarez,

Administrator.

[FR Doc. 01–1709 Filed 1–19–01; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

SBA Minority Contractors Finance Pilot Loan Program

AGENCY: Small Business Administration.

ACTION: Notice of pilot program ''SBA Minority Contractors Finance Pilot Loan Program''

SUMMARY: The Small Business Administration (SBA) is establishing a pilot program in which certain lenders will be permitted to use their own documentation forms to expeditiously approve loan amounts up to $250,000 for small business contractors and subcontractors in Rhode Island using the Section 7(a) loan program. The program will offer a technical assistance component provided by a Small Business Development Center (SBDC) and additional guaranty support from non-SBA sources for a lower risk exposure that is attractive to lenders and other modifications to SBA's normal lending practices and procedures. This program will be called the SBA Minority Contractors Finance Pilot Loan Program. The purpose for this 18-month pilot program is to address the

difficulties that small business contractors and subcontractors generally experience with access to capital and bonding. This loan pilot program is a key part of an initiative that will first operate in Rhode Island and, may be expanded to other areas of the country.

EFFECTIVE DATE: This pilot will be effective on January 22, 2001 and will remain in effect for 18 months.

FOR FURTHER INFORMATION CONTACT: Mark Hayward, District Director, U.S. Small Business Administration—Rhode Island District Office, 380 Westminster Mall, 5th floor, Providence, RI 02903, (401) 528–4540; FAX: (401) 528–4539.

SUPPLEMENTARY INFORMATION: The Small Business Administration is establishing a streamlined, user friendly loan pilot program designed to help contractors and subcontractors more readily obtain financing and bonding.

SBA found that small business contractors and sub-contractors historically have not received the procurement, management, technical, and financial assistance necessary to maintain their viability. A Rhode Island advisory panel comprised of local lenders, contractors, bonding agents, and state agencies examined the problem and determined that lending to contractors and subcontractors was specialized financing and that the local lending community was disinclined to provide the same level of underwriting and post approval oversight on loans of $250,000 or less as they were for larger contract loans. Moreover, the interest of the taxpayers whose funds support the SBA guaranty had to be protected.

The principal barriers were seen as (i) too much risk and (ii) excessive cost of monitoring. SBA concluded that if borrowers received specialized technical assistance and the contribution of additional guaranty support from sources outside SBA, financing might be more forthcoming from local lenders.

To that end, the Agency has authorized the acceptance of a supplemental guaranty on a portion (up to 90 percent) of the unguaranteed percentage of SBA 7(a) loans, that will be offered by a lending entity of the Rhode Island Economic Development Corporation. The lending entity will contribute as much as $250,000 to assist minority business enterprises.

The specialized technical assistance component will include the utilization of a SBDC to provide the loan packaging assistance that would help the contractors and sub-contractors prepare their commercial loan applications. Non-SBA funds will support the hiring of an experienced team of contracting professionals with the proper knowledge, skills, and abilities to assist the 15–30 client contractors expected to participate in the pilot in bidding, managing, and completing their projects for 18 months. These professionals will be selected by an Executive Committee consisting of SBA staff, local lenders, contractors, bonding agents, and state agencies in a private/state/federal partnership. The Executive Committee also will provide guidance and oversight of the program. The non-SBA funding and resource partners are private foundations, state agencies, banks, and corporations who are committed to producing positive results. Finally, as part of the technical assistance, an Advisory Board is being formed consisting of prime contractors and state agencies to assure deal flow and expertise.

This pilot program emphasizes collaboration and partnerships with Federal, state and local agencies, as well as private sector partners. The pilot program is scheduled to last 18 months, beginning January 22, 2001. Prior to the termination date, SBA will evaluate the program to determine if it should be continued as is, expanded, or ended.

Program authority: 15 U.S.C. 636(a)(25)(b) or Section 7(a)(25)(b) of the Small Business Act.

Dated: January 11, 2001.

Charles D. Tansey,

Associate Deputy Administrator for Capital Access.

[FR Doc. 01–1787 Filed 1–19–01; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of teleconference and meeting.

DATES: Teleconference: January 23, 2001, 1:30–3:30 p.m.

Meeting

February 6, 2001, 8:30 a.m.–5 p.m.
February 7, 2001, 8:30 a.m.–5 p.m.
February 8, 2001, 9:00 a.m.–5 p.m.

ADDRESSES:

Teleconference

Social Security Administration, International Trade Center, 500 E St. SW, 8th Floor, Theatre Room, Washington, DC 20254.

Meeting

Bethesda Hyatt, One Bethesda Metro Center, Bethesda, MD, 20814; Phone 301–657–1234; Fax, 301–657–6453. The hotel is located two doors down from the Bethesda Metro Station on the Red line.

SUPPLEMENTARY INFORMATION: Type of meeting: These meetings are open to the public. Interested parties are invited to attend the meetings. The public is invited to participate by coming to the addresses listed above or calling into the teleconference. The public is also invited to submit comments in writing at any time on or before February 8, 2001.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces meetings of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the Commissioner of SSA, the President, and the Congress on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

The Panel will meet by teleconference commencing Tuesday, January 23, 2001 at 1:30 p.m. to 3:30 p.m. The Panel will use the teleconference to conduct full Panel deliberations on the implementation of the TWWIIA. Public testimony will not be taken.

Agenda (Teleconference): The Panel will deliberate on the implementation of TWWIIA. The public is invited to participate by coming in to the address listed above or calling in to the scheduled teleconference to listen. No public testimony will be taken.

The Panel will meet in person commencing Tuesday, February 6, 2001 at 8:30 a.m. to 5 p.m., Wednesday, February 7, 2001 at 8:30 a.m. to 5 p.m., and Thursday, February 8, 2001 at 9:00 a.m. to 5 p.m. The Panel will use the meeting to receive public testimony, hear presentations on the implementation of TWWIIA, conduct full Panel deliberations, receive briefings and conduct business.

Agenda (Meeting): Public testimony will be heard in person on Tuesday, February 6, 2001 and Wednesday, February 7, 2001 from 8:30 to 9:30. Individuals interested in providing

testimony in person should contact the Panel staff as outlined below to schedule time slots. Members of the public must schedule a timeslot in order to comment.

Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA Implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

In the event that the public comments do not take up the scheduled time period for each day, the Panel will use that time to deliberate and conduct other Panel business. Since seating and teleconference ports may be limited, persons interested in providing testimony at the in person meeting or in attending these meetings should contact the Panel staff by E-mailing Kristen M. Breland, at *'kristen.m.breland@ssa.gov'* or calling (410) 966–7225.

The full agendas for the meetings follow this announcement. The agendas are posted on the Internet at *http://www.ssa.gov/work/Resources/Toolkit/* or can be received in advance electronically or by fax upon request. Seating may be limited so persons interested in attending this meeting should contact the Panel staff by e-mail or telephone.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore MD, 21235.
- Telephone contact with Kristen Breland at (410) 966–7225.
- Fax at (410) 965–9063.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: January 17, 2001.

Deborah M. Morrison,

Designated Federal Officer.

Ticket to Work and Work Incentives Advisory Panel—Public Teleconference Meeting

Social Security Administration, 8th Floor Theatre Room, 500 E Street, SW, Washington, DC 20254

Agenda

Tuesday, January 23, 2001

1:30 PM
Meeting Convened by Designated Federal Officer, Deborah Morrison; Sarah Wiggins Mitchell, Chair, Presiding
1:30–3:15 PM
Deliberations on the Implementation of the Ticket to Work and Work Incentives Improvement Act
3:15–3:30 PM
Administrative Issues
3:30 PM
Adjournment

Ticket to Work and Work Incentives Advisory Panel—Public Meeting

Bethesda Hyatt, One Bethesda Metro Center, Bethesda, MD 20814, Phone: (301) 657–1234; Fax (301) 657–6453. The hotel is located two doors down from the Bethesda Metro Station on the Red line.

Agenda

February 6, 7 and 8, 2001

Tuesday, February 6, 2001, Day 1

8:30 AM
Meeting Called to Order by Deborah Morrison, Designated Federal Officer; Welcome and Introductions—Sarah Mitchell, Chair, Presiding
8:30 to 9:30 AM
Public Testimony Comment Period on TWWIIA Implementation
9:30 to 10:30 AM
Presentations from SSA officials
10:30 to 10:45 AM
Break
10:45 to 11:45 AM
Presentations from Congressional Committee Staff
11:45 AM to 1:15 PM
Lunch (On Your Own)
1:15 PM
Meeting Reconvenes, Sarah Mitchell, Presiding
1:15 to 3:00 PM
Panel Deliberations on TWWIIA Implementation
3:00 to 3:30 PM
Break
3:00 to 5:00 PM
Panel Deliberations on TWWIIA Implementation
5:00 PM
Adjournment

Please note: If time allotted for public comment exceeds the time required, the Panel will use the time to deliberate on TWWIIA implementation.

Wednesday, February 7, 2001, Day 2

8:30 to 9:30 AM
Public Testimony Comment Period on TWWIIA Implementation
9:30 to 11:45 AM
Panel Deliberations on TWWIIA Implementation
11:45 AM to 1:15 PM
Lunch (On Your Own)
1:15 PM
Meeting Reconvenes Sarah Mitchell, Presiding
1:15 to 3:30 PM
Panel Deliberations on TWWIIA Implementation
3:30 to 3:45 PM
Break
3:45 to 5:00 PM
Panel Deliberations on TWWIIA Implementation
5:00 PM
Adjournment

Please note: If time allotted for public comment exceeds the time required, the Panel will use the time to deliberate on TWWIIA implementation.

Thursday, February 8, 2001, Day 3

9:00 to 11:45AM
Panel Deliberations on TWWIIA Implementation
11:45 AM to 1:15 PM
Lunch (On Your Own)
1:15 PM
Meeting Reconvenes Sarah Mitchell, Presiding
1:15 to 3:30 PM
Panel Deliberations on TWWIIA Implementation
3:30 to 3:45 PM
Break
3:45 to 5:00 PM
Business Meeting
5:00 PM

Adjournment by Designated Federal Officer

[FR Doc. 01–1952 Filed 1–19–01; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice No. 3553]

Bureau of Oceans, International Environmental and Scientific Affairs; Public Meeting To Discuss Recently Completed Negotiations on an International Agreement Through the United Nations Environment Program (UNEP) on Persistent Organic Pollutants (POPs)

SUMMARY: The United States Government, through an interagency working group chaired by the U.S. Department of State, participated in the successful fifth negotiating session on a global agreement to address the release of certain POPs. The Department of State will host a public meeting for interested parties, including

environmental non-governmental organizations and industry representatives on Tuesday, January 30, 2001, from 10:00 a.m. to 11:00 a.m. in Room 1408 of the U.S. Department of State, 2201 C Street NW, Washington, DC. To arrange for their entrance into the building, attendees should provide to Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (tel. 202–647–9266, fax 202–647–5947) their name, organization, date of birth and Social Security number by noon on Monday, January 29, 2000. Attendees should enter the C Street entrance and bring picture identification with them. For further information, please contact Dr. Marie Ricciardone, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington DC 20520, phone 202–736–4660, fax 202–647–5947, e-mail RicciardoneMD@state.gov.

SUPPLEMENTARY INFORMATION:

The UNEP POPs Negotiations

The POPs treaty is the first global treaty to address in a comprehensive manner the risks to human health and the environment of POPs chemicals. The treaty will in the first instance deal with twelve substances: aldrin, endrin, hexachlorobenzene, toxaphene, chlordane, dieldrin, heptachlor, mirex, DDT, PCBs, dioxins and furans. These substances fall into three categories: pesticides, industrial chemicals, and unintended by-products of combustion and industrial processes.

The global agreement is an ambitious undertaking, since it encompasses a broad range of measures to address POPs of transboundary concern. These range from controls on production and use for commercial chemicals, restrictions on POPs wastes, and controls on by-products that come from combustion and industrial processes. For many countries, this will be the first time that manufacture and use of these substances have been restricted, and the effects are likely to be far-reaching.

Since the U.S. and other developed countries have already taken actions on these chemicals, a major goal for the agreement is broad participation by developing countries and, consequently, meaningful reductions in the amount of pollutants that are released into the environment. A critical part of the agreement is the technical and financial assistance mechanisms to help developing countries effectively implement their obligations.

Timetable and Point of Contact

The public meeting will be held on Tuesday, January 20, 2001 from 10 a.m. to 11 a.m. in Room 1408 of the U.S. Department of State. Some members of the interagency working group who participated in the negotiation will provide an overview of the fifth session. The U.S. Department of State is issuing this notice to help ensure that interested and potentially affected parties are aware of and knowledgeable about the conclusion of these negotiations, and have an opportunity to offer comments. Those organizations or individuals which cannot attend the meeting, but wish to either submit a written comment or to remain informed, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (phone 202–647–9266; fax 202–647–5947) with their statement and/or their name, organization, address, telephone and fax numbers, and their e-mail address.

Dated: January 16, 2001.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, U.S. Department of State.

[FR Doc. 01–1834 Filed 1–19–01; 8:45 am]

BILLING CODE 4710–06–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1526).

TIME AND DATE: 9 a.m. (EST), January 24, 2001.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on November 15, 2000.

NEW BUSINESS:

C—Energy

C1. Revision of TVA Policy and Principles on the Environment.

C2. TVA Business Practice entitled ''The Sale or Use of Coal Combustion By-Products and Related Services.''

C3. Supplement to Contract No. 95P6F–133445 with Day & Zimmermann NPS, Inc., for modification and supplemental maintenance work at TVA's western region fossil facilities.

C4. Contract with KVB-Enertec for selective catalytic reduction flue gas analyzer systems at Allen, Bull Run, Colbert, Cumberland, Kingston, Paradise, and Widows Creek Fossil Plants.

C5. Supplement to Contract No. 00PPW–264807 with Foster Wheeler Energy Corporation for the design and supply of superheater and reheater elements for Widows Creek Fossil Plant Unit 7 and other TVA Fossil Plants.

E—Real Property Transactions

E1. Grant of a permanent easement to the City of Decatur, Alabama, for a sewerline and wastewater treatment plant affecting approximately 2.2 acres of land on Wheeler Reservoir in Morgan County, Alabama, Tract No. XTWR–113SP.

E2. Deed modification affecting approximately 9.3 acres of former TVA land located at Nitrate Plant No. 1 in Colbert County, Alabama, Tract No. XNPT–32, to allow the City of Sheffield to lease the property for the production of movies and for film-making education.

F—Other

F1. Designation of Maureen H. Dunn as Secretary and Clifford L. Beach, Jr., and James E. Norris as Assistant Secretaries of TVA.

F2. Approval to file condemnation cases to acquire the right to remove and dispose of trees that could endanger transmission lines and the temporary right to enter upon land to survey, appraise, and preform title investigations for an easement and right-of-way. The affected transmission lines are Kentucky Dam-Nashville Tap to Ashland City in Cheatham County, Tennessee, and Hanceville-Bremen in Cullman County, Alabama.

Information Items

1. Approval of an Amendment to the Trust Agreement between the Board of Directors of the TVA Retirement System and Fidelity Management Trust Company.

2. Approval of WRH Partners II as a new investment manager for the TVA Retirement System and approval of the Investment Management Agreement between the TVA Retirement System and the new investment manager.

3. Appointment of Karl Dudley, General Manager, Pickwick Electric Cooperative, as a member of Regional Resource Stewardship Council.

4. Approval of the modification of Contract No. P98P01–203507 with Thunder Basin Coal Company, LLC, for coal supply to Allen, Gallatin, Paradise, Johnsonville, Colbert, and Shawnee Fossil Plants.

5. Approval to file a condemnation case to acquire a right-of-way easement for the Weaver-Young Cane transmission line in Union County, Georgia.

6. Approval of a deed modification, at the request of the Tennessee Wildlife Resources Agency, affecting

approximately 6.1 acres of land on Fort Loudoun Reservoir in Blount County, Tennessee, Tract No. XTFL–13.

7. Approval of recommendations resulting from the 65th Annual Wage Conference 2000—Construction Project Agreement (Hourly) Wage Rates.

8. Approval of recommendations resulting from the 65th Annual Wage Conference, 2000—Wage Rates of Annual Trades and Labor Employees and Teamsters.

9. Approval of negotiated revisions to General Agreement and related Memorandums of Understanding covering Annual Trades and Labor Employees.

For more information: Please call TVA Public Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: January 17, 2001.

Charles L. Young,

Assistant General Counsel, and Assistant Secretary.

[FR Doc. 01–1993 Filed 1–18–01; 12:52 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–2001–8696]

DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The United States Department of Transportation is publishing policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: This guidance is effective immediately. Comments must be submitted on or before March 23, 2001. DOT will review all comments and will determine what modifications to the policy guidance, if any, are necessary

ADDRESSES: Interested persons should submit written comments to Marc Brenman, Senior Policy Advisor, Office of Civil Rights, Department of Transportation, 400 7th St. SW., Washington, DC 20590, or marc.brenman@ost.dot.gov; comments may also be submitted by facsimile at 202–366–9371.

FOR FURTHER INFORMATION CONTACT: Marc Brenman, Office of Civil Rights, 400 7th St. SW., Washington, DC 20590. Telephone 202–366–1119; e-mail marc.brenman@ost.dot.gov; or David Tochen, Office of the General Counsel, 400 7th St. SW., Washington, DC 20590, 202–366–9153, e-mail david.tochen@ost.dot.gov. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the U.S. Department of Transportation (DOT) (''recipients''), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates DOT's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

The policy guidance includes an appendix. Appendix A summarizes DOT's Title VI regulations, as they apply to LEP persons.

Dated: January 16, 2001.

Ronald A. Stroman,

Director, Departmental Office of Civil Rights, Department of Transportation.

DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries

I. Background

On August 11, 2000, President Clinton signed Executive Order 13166, entitled ''Improving Access to Services for Persons with Limited English Proficiency.'' 65 FR 50121 (September 16, 2000). On the same day, the Assistant Attorney General for Civil Rights issued a Policy Guidance Document titled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency'' (hereinafter referred to as ''DOJ LEP Guidance''), reprinted at 65 FR 50123 (September 16, 2000).

Executive Order 13166 requires Federal departments and agencies extending financial assistance to develop and make available guidance on how recipients should, consistent with the DOJ LEP Guidance and Title VI of the Civil Rights Act of 1964, as amended, assess and address the needs of otherwise eligible limited English proficient persons seeking access to the programs and activities of recipients of federal financial assistance. The DOJ LEP Guidance, in turn, provides general guidance on how recipients can ensure compliance with their Title VI obligation to ''take reasonable steps to ensure 'meaningful' access to the information and services they provide.'' DOJ LEP Guidance, 65 FR at 50124. The DOJ LEP Guidance goes on to provide,

> [w]hat constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the recipient.

Id. The DOJ LEP Guidance explains that the identification of ''reasonable steps'' to provide oral and written services in languages other than English is to be determined on a case-by-case basis through a balancing of all four factors.

The failure to assure that people who are not proficient in English can effectively participate in, and have meaningful access to, a Department of Transportation (DOT) financial assistance recipient's programs and activities may constitute national origin discrimination prohibited by Title VI and implementing regulations. Supreme Court precedent, and longstanding congressional provisions and federal agency regulations have repeatedly instructed that a nexus exists between language and national origin. As used throughout this Guidance, ''DOT'' is intended to include all the Department's operating administrations, components, and Secretarial offices.

This LEP Guidance addresses the key elements that DOT encourages its recipients to consider to ensure meaningful access to programs and activities by all people regardless of race or national origin. The purpose of the Guidance is to assist recipients in complying with their Title VI responsibilities to ensure that access to their programs or activities, normally provided in English, are accessible to LEP persons. The Guidance is consistent with the requirements of Executive Order 13166 and with the DOJ LEP Guidance.

During the development of this Guidance, DOT has ensured that stakeholders, such as LEP persons, their

representative organizations, recipients, and other appropriate individuals and entities have had an adequate opportunity to provide input. Additional input is welcome.

Large numbers of minorities in the United States are linguistically isolated. According to the 1990 U.S. Census, 31.8 million persons or 13% of the total U.S. population (ages 5 and above) speak a language other than English at home. Almost 2 million people do not speak English at all and 4.8 million people do not speak English well. The 1990 U.S. Census also found that various minority populations and subgroups are linguistically isolated: Approximately 4 million Hispanics; approximately 1.6 million Asians and Pacific Islanders; approximately 282,000 Blacks; and approximately 77,000 Native Americans and Alaska Natives. Of those who speak Spanish in the United States, 97% are Hispanic. Research indicates that the correlation between language and national origin is also very high. As of 1989, 72.5% of Chinese Americans speak a language other than English at home. Comparable figures for other Asian Pacific Islander groups exist for Cambodians (81.9%), Vietnamese (80.7%), Laotians (77.4%), Thai (72.5%), Koreans (69.7%), Filipinos (59.9%), Indians (55.3%), and Japanese (40.5%).

School districts in many parts of the country are experiencing a substantial increase in the enrollment of national-origin-minority students who cannot speak, read, or write English well enough to participate meaningfully in educational programs without appropriate support services. There are approximately 3.5 million LEP students in the United States. The number of LEP students enrolled in public and nonpublic schools in the United States continues to increase each year. Between 1990 and 1997, the number of LEP students has risen by 57%. Most LEP students have parents whose skills in English are less than that of the students. The reported number of LEP students in K–12 public schools comprises 8% of the total public school enrollment in the United States. All states enroll LEP students. The states with the largest reported number of LEP students are California (1,381,383), Texas (513,634), and Florida (288,603). The states with the largest reported percentage of LEP students are Alaska (26%), New Mexico (24%), and California (22%). Since many public transportation providers also transport students to and from school, these figures are important.

In regard to one state alone, Pennsylvania ranks tenth among all states in the numbers of foreign-born persons who reside within its borders. Many of these individuals come to the United States with limited English skills, and are at varying stages of learning the English language. In all, more than seven percent of Pennsylvania's residents speak a primary language other than English. It is estimated that Philadelphia alone is home to approximately 30,000 Vietnamese, 25,000 ethnic Chinese, 10,000 Cambodians, and 7,000 Laotians. According to the 1990 Census, approximately 54% of persons in Pennsylvania whose home language is an Asian language do not speak English very well.

Many welfare recipients wrestle with poor job skills, health problems, and lack of transportation, in addition to language barriers. Besides the social, cultural and linguistic barriers, which affect the delivery of adequate transportation services, there are other factors that contribute to the poor social service status of LEP persons. These factors include the following:

- Inadequate number of health care providers and other health care professionals skilled in culturally competent and linguistically appropriate delivery of services.
- Scarcity of trained interpreters at the community level.
- Deficiency of knowledge about appropriate mechanisms to address language barriers in transportation settings.
- Absence of effective partnerships between major mainstream provider organizations and LEP minority communities.
- Low economic status.
- Lack of insurance.
- Organizational barriers.

One recipient reported to DOT as follows, regarding the barriers people who are LEP face in transportation:

> Language barriers prohibit people who are LEP from obtaining services and information relating to transportation services and programs. Because people who are LEP are not able to read instructions or correspondence written in English and may not understand verbal information, they often are not aware of regulatory requirements and legal implications of the services they seek. People who are LEP also do not have the ability to read variable message signs which alert them to dangerous driving conditions. When people who are LEP receive Orders or other legal documents, they often do not understand the contents of the correspondence and its implication to their daily lives. People who are LEP may not be able to take advantage of the transit system, which could affect their job and social opportunities. When their home or business property is acquired by the State DOT, they may not be aware of or understand the benefits to which they are entitled. When individuals do not understand or read English, they are hampered in seeking employment opportunities.

It is essential that transportation providers, professionals, and other DOT recipients become informed about their diverse clientele from a linguistic, cultural and social perspective. These individuals should become culturally competent so they can encourage vulnerable LEP minority populations to access and receive appropriate transportation services with more knowledge and confidence.

Advantages to Recipients Other Than Providing Beneficiary Access to Special Language (Spillover Benefits)

Helping Prevent Complaints: DOT receives complaints from beneficiaries alleging that insufficient information has been provided by recipients to beneficiaries in the primary or home language of the beneficiaries. For example, in the current (as of the date of this guidance) Title VI administrative complaint, West Harlem Environmental Action v. New York Metropolitan Transportation Authority and New York City Transit, the complainants seek as a part of their requested relief, ''Translating all notices about impending depot and bus parking lot developments into Spanish.'' Providing such services before complaints are filed may help forestall such complaints and create better relations with beneficiary groups.

Economic Benefits: Translations of public transportation service documents may assist tourists and help establish localities as thoughtful and appropriate sites for global trade and investment.

II. Definitions

Limited-English-Proficient Persons: Individuals with a primary or home language other than English who must, due to limited fluency in English, communicate in that primary or home language if the individuals are to have an equal opportunity to participate effectively in or benefit from any aid, service or benefit provided by the transportation provider or other DOT recipient.

Linguistically Isolated: This term is defined in the Census as the percentage of the persons in households in which no one over the age of 14 speaks English well, and is used as a direct measure of those persons with a severe language barrier, as distinct from those of foreign origin who speak English well. Those who are linguistically isolated may also be unable to benefit from transportation services and the services of other DOT

recipients, and therefore should receive attention from recipients as a high priority.

Federal financial assistance: The term Federal financial assistance to which Title VI applies includes but is not limited to grants and loans of Federal funds, grants or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract which has as one of its purposes the provision of assistance.

Qualified interpreter: Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals with limited English skills. The interpreter should be able to interpret both receptively and expressively, using any necessary specialized vocabulary.

Non-English language relay service: A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a communications assistant who is fluent in that language.

III. Legal Background

Title VI of the Civil Rights Act of 1964 and its implementing regulations prohibit recipients of federal financial assistance from discriminating on the basis of race, color, or national origin. In certain circumstances, failure to provide meaningful access to LEP persons is national origin discrimination. Most of the statements in this Guidance pertain to services provided by a recipient, rather than employment by the recipient. However, employment discrimination is covered by Title VI if the federal financial assistance is provided for the purpose of employment or if employment discrimination results in discrimination against program beneficiaries.

In order to avoid discrimination against LEP persons on the grounds of national origin, Title VI and the DOT Title VI regulations require recipients to take reasonable steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to their programs and activities. A useful test of compliance with this guidance is to ask the question, ''If we do not provide the service in question in a language a beneficiary understands, will the beneficiary still receive essentially the same benefit or service that we provide to others who are fluent in English?''

As discussed below, the framework for compliance with Title VI in this area is a flexible one, and DOT recognizes that a ''one-size-fits-all'' approach is not satisfactory. For instance, some recipients may have different Title VI LEP concerns in communities affected by their programs and activities, and may have different amounts of resources available. DOT also recognizes that some recipients are already addressing Title VI LEP concerns through existing programs and activities. We have tried to include examples of these efforts under Section IX, entitled ''Promising Practices/Best Practices.'' More examples are welcome.

Many recipients of Federal financial assistance recognize that the failure to provide language assistance to LEP persons may deny them vital access to programs or activities. The failure to remove language barriers can be attributed to many reasons ranging from ignorance of the fact that some members of the community are unable to communicate in English to intentional discrimination on the basis of national origin. While there is not always a direct relationship between an individual's language and national origin, language often serves as an identifier of national origin. As the Supreme Court observed in *Hernandez* v. *New York,*

> [l]anguage elicits a response from others, * * * ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility * * * It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.

500 U.S. 352, 371 (1991). The significant discriminatory effects that result from the failure to provide language assistance to LEP persons, places the treatment of LEP individuals comfortably within the ambit of Title VI and DOT's implementing regulations.

In *Lau* v. *Nichols,* 414 U.S. 563 (1974), the Supreme Court recognized that, pursuant to Title VI, recipients of Federal financial assistance have an affirmative responsibility to provide LEP persons with a meaningful opportunity to participate in publicly funded programs. Lau involved a group of students of Chinese origin who did not speak English to whom the recipient provided the same services—an education provided solely in English—that it provided students who did speak English. The Court held that, under these circumstances, the school district's practice violated the Title VI prohibition against discrimination on the basis of national origin. The Court observed that ''[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by'' the Title VI regulations. Courts have applied the doctrine enunciated in Lau both inside and outside of the educational context. It has been considered in contexts as varied as what languages drivers' license tests must be given in, to whether material relating to unemployment benefits must be provided in a language other than English.

Most recently, and in a transportation context, the Eleventh Circuit in *Sandoval* v. *Hagan,* 197 F. 3rd 484 (11th Cir. 1999) *petition for certiorari granted, Alexander* v. *Sandoval,* 121 S.Ct. 28 (Sept. 26, 2000) (No. 99–1908) held that the State of Alabama's policy of administering a driver's license examination only in English was a facially neutral practice that had a disproportionate adverse effect on the basis of national origin, in violation of Title VI. The Court specifically noted the nexus between language policies and potential discrimination based on national origin. That is, in *Sandoval,* the vast majority of individuals who were adversely affected by Alabama's English-only driver's license examination policy were of foreign descent. It is interesting to note that the State produced *no* evidence at trial that non-English speakers pose greater highway safety risks than English speakers.

The Title VI regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have a disproportionate adverse effect on LEP persons' ability to access programs and services. Accordingly, it is useful for recipients to examine their policies and practices to determine whether they adversely affect LEP persons disproportionately. This LEP Guidance provides a legal framework to assist recipients in conducting such assessments.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. What constitutes a program or activity covered by Title VI was clarified by Congress when the Civil Rights Restoration Act of 1987 (CRRA) was enacted. The CRRA provides that, in most cases, when a recipient receives Federal financial assistance for a

particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance is used only by one part.

The Department of Justice is the principal federal agency for coordinating Title VI requirements. The obligation on the part of recipients to address the language needs of beneficiaries has been a long-standing part of its Title VI coordination policies. See 28 CFR 42.405(d)(1) (1976). Moreover, other federal agencies have adopted Title VI enforcement policies that the denial of benefits to non-English speakers may result in a disparate impact based on national origin in violation of Title VI. For example, inability to drive a car adversely affects individuals in the form of lost economic opportunities, social services, and other quality of life pursuits.

State or local ''English-Only'' laws

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local ''English-only'' laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws. State and local entities with ''English-only'' laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI and its implementing regulations, including their prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

In *Sandoval* v. *Hagan,* the Court of Appeals for the Eleventh Circuit found that Alabama's ''English-Only policy'' had a significant disparate impact on foreign-born individuals, and imposed significant adversity on individuals by excluding otherwise qualified drivers from obtaining licenses. It enjoined the continued use of the ''English-Only policy'' and ordered Alabama to submit a plan for compliance. People with licenses can get to work in places not served by public transportation and earn better wages. The inability to drive also may stand in the way of satisfying other important needs, such as the need to get emergency medical attention, particularly in rural areas not served by public transportation. Additionally, driver's licenses are the most common form of identification in this country; without one, it is difficult to take part in the life of the community—opening a bank account, cashing a check, getting a library card, etc. For these many reasons, the inability of LEP persons to obtain driver's licenses presents serious problems.

IV. Ensuring Meaningful Access to LEP Persons

Title VI and its regulations require recipients to take reasonable steps to ensure ''meaningful'' access to DOT recipients' programs and activities. The key to providing meaningful access to LEP persons is to ensure that recipients and LEP beneficiaries can communicate effectively and act appropriately based on that communication. Thus, DOT recipients should take reasonable steps to ensure that LEP persons are given adequate information, are able to understand that information, and are able to participate effectively in recipient programs or activities, where appropriate. As the demographics of the United States continue to change and the proportion of LEP communities and populations continue to grow, a recipient's challenge (as well as DOT's challenge) will be to develop linguistically appropriate and effective methods of communication with LEP persons within the usual, tight resource constraints.

A. Assessment of Meaningful Access

DOT's main focus when evaluating a Title VI complaint based on allegations of national origin discrimination against LEP persons will be whether a recipient has taken reasonable steps to eliminate barriers to meaningful communication with LEP individuals and to provide necessary services equivalent to those provided to people who are fully English proficient. What ''reasonable steps'' should be taken will depend upon a number of factors. These factors include the following:

• The number and proportion of LEP persons potentially served by the recipient's programs or activities, and the variety of languages spoken in the recipient's service area:

The recipient should consider the number or proportion of people who will be excluded from participation in programs or activities without efforts to remove language barriers. Programs and activities that affect a few or even one LEP person are subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities to obtain services. Nevertheless, the steps that are reasonable for a recipient whose programs or activities affect one LEP person a year may be different than those expected from a recipient whose program or activity affects many LEP persons on a regular basis. However, DOT encourages even those recipients whose programs or activities affect very few LEP persons on an infrequent basis to consider reasonable steps for involvement of LEP persons and to plan for situations in which LEP persons will be affected under the program or activity in question. This plan need not be intricate; it may be as simple as having certain public notices translated into a language other than English, providing an interpreter under certain conditions, or making available technological solutions such as a telephone language line.

• The frequency with which LEP individuals are affected by the program or activity:

The frequency with which LEP persons are affected by the programs or activities is also important. DOT encourages recipients to take into account the frequency with which the recipient's program or activity may affect LEP persons in its service area and to have the flexibility to tailor its actions to those needs. For example, if the recipient knows that there is a large LEP community that exists and that community is often impacted by the recipient's programs and activities, it may want to regularly translate notices of public hearings and post them in areas where LEP individuals will see them. DOT encourages recipients to use communication methods likely to reach the affected community (e.g., insert information with utility bills, place public service announcements on local radio shows, place notices on bulletin boards in grocery stores, houses of worship, community newspapers and community centers). In the notices, you can provide the option of translation services at public hearings if individuals contact you by a certain date. This way, if no one responds you do not expend valuable resources when no actual need for translation services exists.

Notices and information that are generally available to the public should be made available to substantial LEP populations. For example, weather and road condition telephone lines and websites should be available in translation. In areas with severe weather, such notices will probably rise to the level of safety issues, and therefore require the higher level of service described elsewhere in this guidance.

• The importance of the effect of the recipient's program or activity on LEP

persons, bearing in mind that transportation is considered an essential service to participation in modern society:

The importance of the effects of the recipient's program or activity on LEP persons has a direct bearing on the reasonableness of steps taken to ensure meaningful participation. DOT encourages you to take more vigorous steps where the denial or delay of access may have more crucial implications than in situations that are not as crucial to one's day-to-day activities. For example, the obligations of federally-assisted health, emergency, hazardous materials, and safety efforts differ from those of a Federally-assisted program where safety or health is not at stake. DOT encourages you to consider the importance of the participation in the program or activity to individuals both immediately and in the long-term, as well as synergistic effects. In a study done in 1995, all Emergency Medical Services (EMS) personnel who participated referred to language as a principal challenge in effectively working with Hispanic community members. In addition, many recently arrived Hispanics are not accustomed to using the telephone to access emergency medical services. Such circumstances justify greater efforts by recipients to educate LEP individuals, as discussed elsewhere in this Guidance. In addition, inability to access public transportation may adversely effect ability to obtain health care, education, and jobs.

• The resources available to the recipient, and whether the recipient has budgeted for provision of special language services:

Resources of a recipient may be a factor in determining the level and kind of language services it should provide. Larger recipients with more resources will have more language service responsibilities than smaller recipients with few resources. DOT will use a reasonableness standard in evaluating whether a recipient's efforts are sufficient. Where excessive cost is proffered by a recipient as a reason for not undertaking necessary special language services, DOT will evaluate the situation on a case-by-case basis. DOT's evaluation will include a consideration of the totality of the recipient's circumstances, including the size of the budget of the largest organizational entity which supervises the work of the program, project or activity that directly receives DOT financial assistance. For example, for a unit of a state department of transportation, the budget of the entire state DOT will be used as a point of reference. Other considerations will include those listed elsewhere in this Guidance, such as the size of the LEP population needing services, the degree to which such populations have been historically excluded from services, the availability of less costly alternative service modalities, whether the costs can be amortized over time or are a one-time expense, whether services can be phased in to avoid excessive cost in any one year, the possibility of alternate sources of funds to pay for the necessary services, whether the services are required in response to complaints or law suits, and how long the recipient has been on notice that the special language services should be provided. Note that Title VI has been in existence since 1964, and that recipients have been on notice that discrimination on the basis of national origin has been prohibited since then.

• The level of services provided to fully English proficient people;

• Whether LEP persons are being excluded from services, or being provided a lower level of services:

Only under rare circumstances could this exclusion be justified, and the burden of proving the need for the exclusion would be very high. Example 1: The recipient provides no services to a neighborhood where LEP people live, while providing services to a neighborhood where fully English proficient people live. Example 2: Several years ago, a job access program funded by DOT's Federal Transit Administration stated in its brochures that eligible applicants must ''speak English.'' Note that the prohibition on exclusion due to national origin would also apply to situations where a recipient excluded a beneficiary from bringing an interpreter to a meeting, test, or other formal situation with the recipient. Although DOT discourages reliance by recipients on beneficiary-supplied interpreters, if the beneficiary desires to use one, and the recipient does not supply an interpreter, the recipient should permit his/her use. DOT recognizes that issues of security of testing are sometimes thought to arise when an non-recipient-supplied interpreter translates for a beneficiary. These issues are the responsibility of the recipient. If security is felt to be a potential problem by a recipient, the recipient bears the burden of supplying the interpreter.

• Whether the recipient has adequate justification for restrictions, if any, on special language services or speaking languages other than English:

Such justifications would be accepted only in rare circumstances. Assertions of safety justifications would generally not be accepted unless accompanied by statistical and/or scientific causality studies and evidence showing a positive correlation between limited English proficiency and crash and death/injury rates at rates substantially higher than would be expected due to chance.

There is no one-size fits all solution for Title VI compliance with respect to LEP persons. When investigating a Title VI complaint, DOT will assess language assistance allegations on a case-by-case basis, and will afford considerable flexibility to recipients to determine precisely how to fulfill this obligation. DOT will focus on the end result—whether recipients have taken the necessary steps to ensure that LEP persons have meaningful access to participate in their programs and activities, and whether those services are being provided so that LEP persons have an equal opportunity to benefit from recipients' services.

V. Compliance and Enforcement

The recommendations outlined in this Guidance are not intended to be exhaustive. Recipients should establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. DOT enforces Title VI as it applies to recipients' responsibilities to LEP persons through the procedures provided for in DOT's Title VI regulations (49 CFR Part 21, see Appendix A), and in appropriate DOT operating administration regulations. These procedures include complaint investigations, compliance reviews, alternative dispute resolution, efforts to secure voluntary compliance and technical assistance.

DOT's Title VI regulations provide that the agency will investigate whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, DOT will inform the recipient and the complainant in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, DOT must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOT must secure compliance through (a) the termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to DOJ for injunctive relief or other

enforcement proceedings, or (c) any other means authorized by law.

As the Title VI regulations set forth in the Appendix indicate, DOT has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. During these efforts to secure voluntary compliance, DOT consults with and assists recipients entities in exploring cost effective ways of coming into compliance, by sharing information on potential community resources, by increasing awareness of emerging technologies, by sharing information on how other recipients entities have addressed the language needs of diverse populations, and by proposing reasonable timetables for achieving compliance.

Whenever possible, DOT provides recipients with technical assistance upon request and an opportunity to come into voluntary compliance with Title VI prior to initiating formal enforcement proceedings. In determining a recipient's compliance with Title VI, the Departmental Office of Civil Rights' (DOCR) primary concern is to ensure that the recipient's policies and procedures allow LEP persons to overcome language differences that result in barriers and have a meaningful opportunity to participate in and access programs, services and benefits to the same extent as fully English proficient persons. A recipients's appropriate use of the methods and options discussed in this policy guidance will be viewed by DOCR as evidence of a recipient's willingness to comply voluntarily with its Title VI obligations.

Further, when reviewing any claim of discrimination, DOT considers the severity of the adverse impact on LEP persons, the egregiousness or pervasiveness of any adverse action taken by a recipient, and whether the recipient has shown an intent to discriminate.

Assurance Forms

When organizations apply for DOT financial assistance, they submit an assurance with their applications that they will comply with the requirements of DOT's regulations implementing Title VI with respect to their programs and activities. When they receive DOT financial assistance, they accept the obligation to comply with DOT's Title VI implementing regulations. These assurances should be understood to include provision of services to national origin minority persons who are limited English proficient.

VI. Framework for Language Assistance

DOT has determined that effective language assistance programs usually address each of the elements described below. The failure to incorporate or implement one or more of these elements does not necessarily indicate noncompliance with Title VI. When investigating Title VI complaints, DOT will review the totality of the circumstances to determine whether LEP persons have had meaningful access to participate effectively in a recipient's programs and activities.

1. Needs Assessment

A recipient should conduct a thorough assessment of the language needs of the population and communities affected by the recipient.

The first key to ensuring meaningful access to LEP persons is to assess the language needs of the affected population and communities served, through application of the analysis described elsewhere in this Guidance. Ways to assess language needs include identifying the non-English languages used in communities affected by the recipient, estimating how many people speak each language, where they live, and how well they are currently accessing services provided to those who are fully English proficient. After identifying LEP communities, DOT encourages recipients to consider any barriers to communication with these communities. It is possible that, in certain instances, the results of the assessment may indicate that, although LEP communities are affected by the programs and activities, there are no barriers to communication with these communities, because they are bilingual, for instance, or do not need or want translation services.

An approach may be developed to identify geographic areas where LEP communities live using existing resources such as census data, data from local organizations and community groups, faith-based groups that provide services in languages other than English, immigrant aid organizations, state refugee coordinators, non-English media outlets, and school district LEP statistics. The latter are particularly valuable, since all school districts are required to maintain data on LEP students and provide necessary special language services. It is important to collaborate with community groups and other appropriate stakeholders to develop the criteria for identifying geographic areas. Once the areas are identified, the recipient can work with the affected communities and stakeholders to determine their language assistance needs. The recipient may also choose to identify actual or potential populations within a particular service area or area of responsibility.

Specifically, DOT encourages recipients to identify linguistically isolated populations or job sites in which LEP persons represent a significant proportion of the workforce (*e.g.,* manual labor, hotel cleaning, food preparation, auto supplies, etc.) Transportation entities in particular should be aware of the potential difficulties LEP people may have in public transportation from home to work, health facilities, schools, shopping, faith-based facilities, day-care, and leisure activities. New immigrants to the United States from non-English speaking countries may be especially in need of special language services. Note that Title VI of the Civil Rights Act of 1964 covers ''people in the United States.'' Thus, recipients may generally not refuse to provide services to non-citizens, regardless of immigration status.

Identifying the points of contact in the program or activity where language assistance is likely to be needed, identifying the resources that will be needed to provide effective language assistance, identifying the location and availability of these resources, and identifying the arrangements that should be made to access these resources in a timely manner are important factors to ensure effective provision of services.

2. Written Language Assistance Plan

Recipients should develop and implement written language assistance plans that will ensure meaningful opportunities for LEP persons to access their programs and activities and effectively participate in them.

A recipient can help ensure effective communication with LEP persons by developing and implementing a comprehensive, written language assistance plan. Such a plan should include policies and procedures for identifying and assessing the language needs of LEP persons, and provide for a range of written and oral language assistance options, periodic training of staff, actual provision of services, and monitoring of the program. DOT encourages recipients to consider the transportation needs of the LEP community affected by the recipient's programs and activities while developing this plan. The factor analysis set forth in this Guidance should be the starting point for identifying areas in which language services are needed.

DOT encourages recipients to consider one or more of the following

ideas as they develop language assistance plans:

• Assigning primary responsibility for development and implementation of the plan to an appropriate manager or supervisor.

• Preparing a written summary of results from the needs assessment (discussed above).

• Identifying actions already being taken and existing tools that can be used to provide meaningful access to LEP individuals, and how well they work.

• Creating an inventory of existing materials that have been translated into other languages to assist LEP individuals.

• Regularly updating the inventory of translated materials.

• Drafting a plan that is specific and detailed, yet flexible enough to respond to existing or potential needs over an appropriate time period (*i.e.,* five years).

• Ensuring that translation arrangements have quality control (*i.e.,* mechanisms are in place to ensure that the translation accurately and appropriately conveys the substance of what is contained in the written materials).

• Distributing the names of organizational contacts who will respond to inquiries and requests regarding access to programs and activities by LEP individuals, in appropriate media and publications.

• Addressing the appropriate mix of written and oral language assistance to ensure effective communication with the LEP population.

A plan should generally include:

• Who is responsible for each step.

• When each step is expected to be completed. (Generally speaking, the more vital the service, the sooner it should be provided.)

• What standards and criteria are to be applied to measure the effectiveness of each step.

• What resources will be devoted to each step.

• How the recipient will document implementation of each step.

3. Staff Training

Recipients should ensure that staff understand the recipient's language assistance policy and are capable of carrying it out.

The success of recipients' LEP/Title VI activities will depend on the staff's knowledge, credibility, and actions. DOT encourages recipients to disseminate the recipient's policy to all employees likely to have contact with LEP persons and to periodically train employees. Effective training, which includes cultural and community relations sensitization, is one way to ensure that there is not a gap between your policies and procedures and the actual practices of employees who interact with LEP persons. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, can work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between beneficiaries, providers and interpreters. It is important that this training be part of the orientation for new employees and all employees in beneficiary contact positions should be properly trained. Given the high turnover rate among some types of employees, a recipient may find it useful to maintain a training registry that records the names and dates of employees' training.

4. Provision of Special Language Assistance

Recipients must actually provide necessary services to LEP persons.

Most important to any LEP plan is to actually provide the necessary services. Actual provision of services includes notification of the availability of services. A vital part of an effective compliance program includes having effective methods for notifying LEP persons regarding their right to language assistance and the availability of such assistance free of charge. These methods include but are not limited to:

• Use of language identification cards that allow LEP beneficiaries to identify their language needs to staff and for staff to identify the language needs of applicants and clients. To be effective, the cards (*e.g.,* ''I speak cards'') should invite the LEP person to identify the language he/she speaks. This identification can be recorded in the LEP person's file, if the recipient keeps such files on beneficiaries.

• Posting and maintaining signs in regularly encountered non-English languages in waiting rooms, reception areas and other initial points of entry. In order to be effective, these signs should inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services.

• Translation of application forms and instructional, informational and other written materials into appropriate non-English languages by competent translators. For LEP persons whose language does not exist in written form, assistance should be provided from an interpreter to explain the contents of the document. LEP persons may need assistance, for example, however, in filling out forms such as those for transit half-fare benefits or paratransit eligibility under the Americans with Disabilities Act.

• Uniform procedures for timely and effective telephone communication between staff and LEP persons. This should include instructions for English-speaking employees to obtain assistance from interpreters or bilingual staff when receiving calls from or initiating calls to LEP persons, and

• Inclusion of statements about the services available and the right to free language assistance services, in appropriate non-English languages, in brochures, booklets, outreach and recruitment information and other materials that are routinely disseminated to the public.

5. Monitoring

Recipients should conduct regular oversight of their language assistance programs to ensure that LEP persons can meaningfully access their programs and activities. It is also important that recipients regularly monitor their language assistance programs by assessing the following:

• Current LEP demographics of the population that is affected by the recipient's programs and activities.

• Current communication needs of LEP communities.

• Whether the recipient's plan is adequately supported so that it has a realistic chance of success.

• Whether existing assistance is meeting the needs of LEP persons.

• Whether recipient staff are knowledgeable about policies and procedures and how to implement them.

• Whether sources of, and arrangements for, assistance are still current and viable.

• Whether the plan is periodically evaluated and revised, as necessary. Note that recipients are required to modify their plans and programs of service if they prove to be unsuccessful after a legitimate trial.

• Number and type of grievances and complaints received by the recipient or against the recipient by DOJ or DOT, alleging lack of provision of services due to limited English proficiency.

One way to evaluate the language assistance program is to seek and obtain feedback from the communities served. DOT believes that compliance with the Title VI language assistance obligation is most likely met when a recipient continuously monitors its program and makes modifications where necessary, including meeting public participation requirements under other initiatives such as environmental justice.

VII. Ways of Providing Language Services

Once the recipient has determined that language services are needed, there are three main ways of providing those services: oral interpretation; written translation; and alternate, non-verbal methods. The following provides information on these three methods.

A. Oral Language Interpretation

In designing an effective language assistance program, a recipient develops procedures for obtaining and providing trained and competent interpreters and other oral language assistance services, in a timely manner, by taking some or all of the following steps:

- Hiring bilingual staff who are trained and competent in the skill of interpreting.
- Hiring staff interpreters who are trained and competent in the skill of interpreting.
- Contracting with an outside interpreter service for trained and competent interpreters.
- Arranging formally for the services of voluntary community interpreters who are trained and competent in the skill of interpreting.
- Arranging/contracting for the use of a telephone language interpreter service.

Bilingual Staff—Hiring bilingual staff for beneficiary contact positions facilitates participation by LEP persons. However, where there are a variety of LEP language groups in a recipient's service area, this option may be insufficient to meet the needs of all LEP applicants and clients. Where this option is insufficient to meet these needs, the recipient should provide additional and timely language assistance. Bilingual staff should be trained and should demonstrate competence as interpreters.

Staff Interpreters—Paid staff interpreters are especially appropriate where there is a frequent and/or regular need for interpreting services. These persons should be competent and readily available.

Contract Interpreters—The use of contract interpreters may be an option for recipients that have an infrequent need for interpreting services, have less common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as needed basis. Such contract interpreters should be readily available and competent.

Community Volunteers—Use of community volunteers may provide recipients with a cost-effective method for providing interpreter services. However, experience has shown that to use community volunteers effectively, recipients should ensure that formal arrangements for interpreting services are made with community organizations so that these organizations are not subjected to *ad hoc* requests for assistance. In addition, recipients should ensure that these volunteers are competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance should be provided where competent volunteers are not readily available during all hours of service.

Telephone Interpreter Lines—A telephone interpreter service line may be a useful option as a supplemental system, or may be useful when a recipient encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many different languages and usually can provide the service in quick response to a request. However, recipients should be aware that such services may not always have readily available interpreters who are familiar with the terminology peculiar to the particular program or service. It is important that a recipient not offer this as the only language assistance option except where other language assistance options are unavailable (*e.g.,* in a rural area visited by a LEP beneficiary who speaks a language that is not usually encountered in the area).

B. Translation of Written Materials

An effective language assistance program ensures that written materials that are routinely provided in English to applicants, clients and the public are available in regularly encountered languages other than English. It is particularly important to ensure that vital documents, such as applications, consent forms, letters containing important information regarding participation in a program (such as a cover letter outlining conditions of participation in a paratransit program), notices pertaining to the reduction, denial or termination of services or benefits or that require a response from beneficiaries, notices advising LEP persons of the availability of free language assistance, and other outreach materials be translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be directly affected by the recipient's program. Materials with a ''gatekeeper'' function, such as those concerning the necessity for insurance and licensure, should be translated. Notices for the public should be published in the primary non-English language media serving the recipient's service area. However, note the emphasis elsewhere in this document on exploring non-verbal/non-language-based approaches to communication. Warning signs should be posted in the languages spoken by people likely to encounter the signs.

Services such as public safety, police, and law enforcement that might result in the diminution of personal freedom, in fines and penalties, in loss of driving privileges, or in ''points'' on driving records, are subject to a high burden on the recipient that provides such services, in terms of timeliness and quality of translation of key documents. Many DOT recipients are engaged in such services—such as state departments of public safety, state motor vehicle departments, transit and railroad police, and airport security. More complete guidance for such special language services by law enforcement personnel is available through the Department of Justice.

It is important to ensure that written materials routinely provided by a recipient in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the recipient's program or activity. A document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits, or is required by law. Vital documents include, for example: applications; consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; and written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. Non-vital information includes documents that are not critical to access such benefits and services.

Vital documents should be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, DOT recognizes that it would be impossible, from a practical and cost-based perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important to continually survey/assess the needs of eligible service populations to determine whether certain critical outreach materials should be translated into other languages.

DOT's National Highway Traffic Safety Administration (NHTSA) has found that direct translation of safety pamphlets and brochures that have been developed in English into a non-English language often results in an inferior or inappropriate product due to the many dialects and linguistic styles of foreign languages and because the materials were not designed to originally focus on a particular dialect-speaking audience. A better approach is to develop the materials in the language and dialect in which they are intended to be used. Also, involving the target community in review of the final brochure or product can eliminate inappropriate word choice and increase the effectiveness of the messages. Community group involvement can also provide a ready means of distribution of the materials

C. Use of Alternative Communication Methods and Devices:

To alleviate the concerns of recipients, and to reduce cost, DOT encourages recipients to explore use of methods and devices that do not use language. For example, use of pictograms, symbol signs, standard symbolic signs (SMS's), diagrams, color-coded warnings, illustrations, graphics, and pictures can be considered. A major example of the use of such methods in transportation infrastructure is the laminated plastic safety information cards in the seat back pouches on commercial airliners. These cards communicate a great deal of important safety information using very few words in any language. Schematic maps can similarly quickly communicate large amounts of information without words. Standard symbols such as are used on international roads and at the Olympics can be used. Use of such non-verbal methods will also help alleviate problems of communication for those who are illiterate or partially literate, those who are too young to read, and those with hearing impairments. Use of symbol signs may help elderly drivers as well, since signing in highway work areas raises sign legibility issues for older drivers. It may be noted that there is overlap between older drivers and those who are more likely to be LEP in some subpopulations, such as the Navajo. Symbol signs and pictograms also benefit globalization of trade and travel.

Example 1. ''Transportation engineers world-wide are moving toward the use of symbol signs in place of word signs because they are easier for people to comprehend in a shorter amount of time. Easily recognized symbols also accommodate people who cannot read English.'' (Irvine, California, Traffic Research and Control Center (ITRAC))

Example 2. ''Universal design considerations also offer the potential to benefit persons with a cognitive disability. For example, standardized symbols, pictures, and color coding offer benefits to persons with a cognitive disability. If written information is provided, the messages should be short and clear. Repetition of symbols and information also helps reduce the difficulty of remembering information.'' (Transport Canada, ''Technologies for travelers with sensory or cognitive disabilities (TP 13247E)'')

A Federal Highway Administration (FHWA) study reached these conclusions about symbol signs:

Minimize symbol complexity by using very few details.

Maximize the distance between symbol sign elements.

Use representational rather than abstract symbols.

Use solid rather than outline figures for designs.

Standardize the design of arrowheads, human figures, and vehicles. Retain maximum contrast between the symbol and the sign background.

Use of pictograms in dynamic signs can be considered. These are in use in Europe. Regulatory speed limit messages are presented using a number in a red circle, which is analogous to the European static speed limit sign. Other symbol messages presented to drivers in dynamic message signs include congestion, snow, and diversion (detour) directions. Research is underway to develop additional symbols for inclusion in the European standards for traffic control devices. Two specific conditions for which symbols are being explored are ''fog'' and ''accident.''

Example: NHTSA, 49 CFR Parts 571 and 575, Consumer Information Regulations: Utility Vehicle Label; Final Rule, Federal Register, March 9, 1999 (Volume 64, Number 45) ''The rule requires the label's header to have an alert symbol (a triangle containing an exclamation point) followed by the statement ''WARNING: Higher Rollover Risk'' in black text on a yellow background. The following three statements must appear below the header in the center of the label: ''Avoid Abrupt Maneuvers and Excessive Speed,'' ''Always Buckle Up,'' and ''See Owner's Manual For Further Information.'' The rule specifies that the label must contain two pictograms: one showing a tilting utility vehicle on the left of the label, and the other showing a seated vehicle occupant with a secured three-point belt system on the right. The pictograms and the statement must be in black on a white background.'' The label was revised from 77 words to 19 words and two pictograms. Permission was granted to companies to produce the label with both the required English words and a translation into other languages. Labels have been produced with French and Spanish translations.

There are opportunities for higher technology approaches, such as use of multimedia pictograms, holograms, photographs, looped videotapes, embedded picture instructions to represent destinations and instructions, information kiosks with multiple languages, courtesy telephones at stations linked to a central number with translators, and voice recognition.

VIII. Application of this Guidance for DOT Recipients

Grievance or Complaint Procedures

Generally, a recipient should maintain a written and publicly known grievance or complaint procedure available to members of the public, so that LEP persons can bring alleged problems with lack of services to the recipient's attention for resolution. DOT encourages recipients to resolve such problems at the lowest level possible and encourages use of alternate dispute resolution. Grievance and complaint procedures should be prompt and equitable while obeying generally accepted elements of due process. However, they need not be overly formal. Existing grievance or complaint procedures can be used if they are modified as necessary to clarify their availability for use with LEP disputes and are made available in languages used in the community service area.

LEP Community Outreach and Education

It may be useful for the recipient to have an established, formal linkage between a minority community-based organization and a transportation provider or infrastructure entity. The linkage can be confirmed by a signed agreement between the applicant and linkage organizations which specifies in

detail the roles and resources that each entity will bring to the project, and states the duration and terms of the linkage. The document can be signed by an individual with the authority to represent the community-based organization (*e.g.,* president, chief executive officer, executive director).

Comprehensive outreach includes the following:

- Use of ethnic media, such as radio, television, newspapers, magazines and websites.
- Use of faith-based organizations, such as temples, mosques and churches.
- Work with community-based organizations at the local (city or county) level that provide social services, health care, classes, etc. to target LEP communities.
- Outreach to schools with substantial enrollments of LEP children.
- Ensure that translated materials provide referrals to telephone numbers or websites that are linguistically accessible (*i.e.,* a flyer in Vietnamese should refer the caller to a hotline with Vietnamese-speaking workers).
- Nontraditional channels, such as day care centers and Headstart programs.
- Forming community groups led by a trained lay educator (a promotore or promotora) to enable adults to discuss issues and learn from each other.

The content of community outreach is important. For example, DOT has been told by a coalition of Southeast Asian-American advocacy groups that many people in their communities lack basic information about transportation services. The information needs include safety and security information, such as what may not be carried on airplanes and questions that will be asked at the ticket counter. Knowledge about public participation opportunities in transportation planning is needed. This area should especially be addressed by metropolitan planning organizations (MPOs).

DOT encourages partnerships among federal recipients and other human services organizations. How these can work is shown in the following example. ''Expand existing loan programs that assist welfare recipients in purchasing cars and increase accessibility to public transportation. Counties should expand existing programs or create new programs that lend money to welfare recipients and other low-income families to purchase cars. Counties should also explore savings accounts that enable recipients to save for purchasing their own cars, without jeopardizing their financial eligibility for welfare cash aid. ERA also recommends that counties partner with transportation agencies to translate transportation information and resources into other languages.'' (Equal Rights Advocates [ERA's] Immigrant Women and Welfare study)

Transportation Planning

Recipients' transportation plans should identify how the needs of LEP persons will be met where a significant number of such persons can be reasonably expected to need transportation services.

Numerical Thresholds

DOT has determined that it will not specify numerical or percentage thresholds for LEP populations that need to be served by recipients. Generally, the larger the number or percent of LEP beneficiaries within a recipient's service area who speak a particular primary or home language, the more thorough, intensive, and speedy the special language services should be. The extent of the service area will in part determine the number or percent of the covered population. For example, the service area of state departments of transportation will generally be considered to be the entire state. The service area of a metropolitan planning organization will be the geographic area for which the MPO provides surface transportation planning services. International airports serve a very broad geographical area, and may be presented with special problems in dealing with a large number of languages. Such difficulties will be taken into consideration by DOT, but it is expected that such transportation providers will know a great deal of demographic information about their users. Similar reasoning applies to national networks like AMTRAK. Note that the population includes those who may potentially be served by the recipient, rather than just those who are presently being served. This is to reach those who are not presently receiving adequate or equitable services from the recipient, but might receive such services if the recipient were to provide special language services to them. DOT recommends that recipients become aware of the changing demographics of their service areas, especially in terms of increasing numbers and percents of languages used, so that recipients can prepare for future service needs.

Emergency Services

DOT funds a number of first responder, emergency, public safety, and hazardous materials services. Because of the safety and health aspects of these services, the need for special language services delivered without noticeable delay by recipients are heightened. Workers in these areas render vitally important services whose very nature requires quick action to protect public safety and health; quick assessment of a situation, often based on input from community members on the spot; the establishment of a close relationship with the client or patient that is based on empathy, confidence and mutual trust; and direction to affected people that must be carried out with specificity to be effective. Such relationships depend heavily on the free flow of communication between professional and client. This essential exchange of information is difficult when the two parties involved speak different languages; it may be impeded further by the presence of an unqualified third person who attempts to serve as an interpreter.

Some safety, emergency, and hazardous materials service providers have sought to bridge the language gap by encouraging LEP clients to provide their own interpreters as an alternative to the agency's hiring of qualified bilingual employees or interpreters. Persons of limited English proficiency must sometimes rely on their minor children to interpret for them during safety incidents. Alternatively, these beneficiaries/clients may be required to call upon neighbors or even strangers they encounter at the site of the incident to act as interpreters or translators.

These practices have severe drawbacks and may violate Title VI of the Civil Rights Act of 1964. In each case, the impediments to effective communication and adequate service are formidable. The beneficiary's untrained ''interpreter'' is often unable to understand the concepts or official terminology he or she is being asked to interpret or translate. Even if the interpreter possesses the necessary language and comprehension skills, his or her mere presence may obstruct the flow of emergency information to the provider.

When these types of circumstances are encountered, the level and quality of safety and emergency services available to LEP persons stand in stark conflict to Title VI's promise of equal access to federally assisted programs and activities. Services denied, delayed or provided under adverse circumstances have serious and sometimes life threatening consequences for a LEP person and may constitute discrimination on the basis of national origin, in violation of Title VI. Accommodation of these language differences through the provision of effective language assistance will promote compliance with Title VI.

Signage

Signage along highways presents a very difficult LEP topic, due to the large number of signs, the cost of changing them, and limitations on space on the sign. Nevertheless, at least one state department of transportation has reported that some LEP persons may not have the ability to read variable message signs that alert them to dangerous driving conditions. Due to the life-saving potential, and subject to technical and scientific study as to its viability regarding message length and time, DOT recommends that recipients explore the possibility of either using pictorial or symbol messages or translating messages into frequently encountered languages on variable message signs that report dangerous driving conditions.

Regarding multilingual signage, a county long range transportation plan has noted, ''Intermodal multilingual referrals and advertising of customer services should be developed. This can include visual, auditive, and print information on how to use the various modes. Appropriate multilingual signage for modes (*e.g.,* bus stops, mode shares, etc.) could be developed and implemented with international symbol signs. Buses could include next stop digital displays inside the bus and/or tone auditory cues for the visually impaired.'' (Bernalillo County, New Mexico, Long Range Transportation Plan, 1993) As discussed elsewhere in this Guidance, non-verbal methods can be considered, such as reducing the amount of text (*e.g.* ''Glover Park,'' ''Massachusetts Avenue,'' ''Addison Road'', etc.) and replacing it with numbers, letters, or colors (*e.g.* D2, L6, Blue Line).

Literacy

Recipients should be sensitive to literacy levels of LEP consumers and clients. Some immigrants and refugees come from pre-literate societies and are not literate in their native language, let alone English, or are not literate for other reasons. However, note that literacy is not covered by Title VI. It makes good sense to consider literacy issues when covering LEP issues, because in some cases, the solutions are the same. See the discussion above about using symbol signs, pictograms, and illustrations. Other solutions include the following:

- Contract and work with community-based organizations to review translated materials for appropriateness of language.
- Use focus groups to test messages and language appropriateness, especially if documents are being translated for the first time.
- Be aware that written translations may not be effective for some communities but that there are alternative mechanisms such as the use of audio or video tapes to provide information.

How does low literacy, non-literacy, use of non-written languages, blindness and deafness among LEP populations affect the responsibilities of recipients? Effective communication in any language requires an understanding of the literacy levels of the eligible populations. Where a LEP person has a limited understanding of important matters or cannot read, access to the program is complicated by factors not directly related to language. Under these circumstances, a recipient should provide transportation and related services information to the same extent that it would provide such information to English-speakers. Similarly, a recipient should assist LEP individuals who cannot read in understanding written materials as it would non-literate English-speakers. A non-written language precludes the translation of documents, but does not affect the responsibility of the recipient to communicate the vital information contained in the document or to provide notice of the availability of oral translation according to the size of that language group.

Special Language Services Should be Locally Focused

Language issues are sometimes local issues, due to matters of usage, dialect, and local preference. Recipient programs of special language services should be designed carefully to accommodate local usage and should be field tested with different local language populations to make appropriate corrections to ensure effective communication. Materials in both English and the primary or home language are generally preferred by non-English speaking groups, but use of English only may sometimes be more appropriate, especially if preferred by the community being served. To account for differences in literacy levels and to make materials more attractive, interesting and likely to be used, the use of photographs and illustrations is recommended. The keys are effectiveness, usability, and transmission of information.

Charging for Special Language Services

Recipients should not impose a charge or a fee for special language services to LEP persons.

Separation for Purposes of Provision of Special Language Services

There may be times when it is most efficient for the recipient to provide special language services separately to people who speak a particular non-English language. However, the program design should not separate these beneficiaries beyond the extent necessary to achieve the goals of the recipient's program of services. Methods that do not segregate should be used whenever possible.

Puerto Rico

Much of Puerto Rico's official business is conducted in Spanish. Therefore, recipients located in Puerto Rico or doing business there should, wherever possible, translate documents into Spanish.

Low-Frequency and Unusual or Unexpected Languages

When an individual with limited English skills—who does not speak a language spoken by a ''significant number or proportion of the population''—seeks services or information from the recipient, the recipient should then make reasonable efforts to meet the particularized needs of that individual. Such efforts may include, but are not limited to, using a telephone language line, locating and temporarily employing a qualified interpreter who can communicate in the appropriate language. As technology advances, various options for complying with the requirements of this section, such as computerized and/or on-line translation services, are becoming increasingly available to recipients, and the cost of these options is decreasing.

An Asian-Pacific Islander health care advocacy group commented in this way on how transportation can present a barrier to health care for those who speak an unusual language for their location: ''Removal of barriers such as transportation: It is important to ensure that there are systems established to address barriers such as transportation and portability in order to ensure that geographic location does not prevent patients from accessing care. [Medical Care Organizations] need to ensure that coverage for enabling transportation is included in the benefits package. Medicaid enrollees often need to access services in other counties. This is particularly important for patients in rural communities, for migrants and for limited English speaking populations. Limited English speaking persons may need to travel a great distance to see a provider who speaks their language.'' (''Making Managed Care Work for Asian

& Pacific Islanders: An Action Agenda for APIA Communities,'' Dong Suh, MPP, Policy Analyst, (415) 954–9966, (415) 954–9999 (fax) or e-mail: dsuh@apiahf.org.)

Surveys

Customer and service surveys by recipients and their contractors, including ones conducted by telephone, should include the ability to obtain information from LEP households and individuals. Given the large number and percent of LEP individuals in the U.S., a general survey would not be regarded as complete without the participation of people who are LEP. For example, NHTSA's semi-annual Motor Vehicle Occupant Safety Survey identified areas of seat belt and car seat safety where people of Hispanic origin differ from the non-Hispanic population. In the 1998 survey, 44% of Hispanic respondents strongly or somewhat agreed with the statement ''I would feel self-conscious around my friends if I wore a seat belt and they did not,'' as opposed to just 15% of non-Hispanics. This information was used to tailor public information and education to the needs and attitudes of the targeted audience.

IX. Promising Practices/Best Practices

The following examples are provided as illustrations of the responses of some recipients to the need to provide services to LEP persons. Although interesting and useful, their listing here does not constitute endorsement by DOT, which will evaluate recipients' situations on a case-by-case basis using the factors described elsewhere in this Guidance.

Language Banks—In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs.

Language Support Office—A state social services agency has established an ''Office for Language Interpreter Services and Translation.'' This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

Multicultural Delivery Project—Another county agency has established a ''Multicultural Delivery Project'' that is designed to help immigrants and other LEP persons find someone who speaks their language and who can help them navigate the county health and social service systems. The project uses community outreach workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the county in touch with community needs.

Use of Technology—Some recipients use their Internet and/or intranet capabilities to store translated documents online. These documents can be retrieved as needed.

Telephone Information Lines and Hotlines—Recipients have established telephone information lines in languages spoken by frequently encountered language groups to instruct callers, in the non-English languages, on how to leave a recorded message that will be answered by someone who speaks the caller's language. For example, NHTSA's Auto Safety hotline has four representatives who speak Spanish and are available during normal hotline business hours (8 a.m.–10 p.m. Eastern Time). The evening hours permit people from the West Coast (where a significant number of LEP persons reside) to call after work. The automated voice response system has an option for instructions in Spanish. Calls from Spanish-speaking customers are placed in a Spanish-speaking cue which has priority for those four operators who speak Spanish.

Signage and Other Outreach—Other recipients have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by (a) posting signs and placards with this information in public places such as grocery stores, bus shelters and subway stations; (b) putting notices in newspapers, and on radio and television stations that serve LEP groups; (c) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; (d) establishing information lines in appropriate languages; and (e) using posters with appropriate languages designed to reach potential beneficiaries.

DOT's Research and Special Programs Administration (RSPA), at 49 CFR 192.616 and 195.440, requires ''Each [pipeline] operator [to] establish a continuing educational program to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The program and the media used should be as comprehensive as necessary to reach all areas in which the operator transports gas. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.'' We recommend such an approach to recipients to meet their individual service provision needs.

The Governor's Highway Safety Office in New Jersey coordinates several programs for the Hispanic community. In Essex County, a bilingual counselor provides community education on safety issues.

Proyecto AASUL (Assistance with Alcohol and Sobriety Uniting Latinas/Ayuda con Alcohol y Sobriedad Uniendo Latinas), funded by the California Department of Transportation, was developed to educate Hispanic women in Southern California about alcohol abuse and related problems. Information and services included a brochure listing alcohol-related service providers with Spanish speaking staff and a fotonovela focusing on the problems of alcoholism in a family setting. A fotonovela is an extensively illustrated booklet that tells a human-interest story.

The El Protector program has been implemented in Del Rio, Texas. The Del Rio Police Department has developed radio spots in Spanish, about traffic safety issues such as putting people in the back of pickup trucks, loading and unloading school buses, drinking and driving, and pedestrian safety.

EMS staff in Los Angeles reported that their system is equipped to receive calls in 86 languages, although Spanish is the most frequent language used by 911 callers who do not speak English.

The Michigan DOT has produced a Title VI poster and brochure in English and Spanish. It?s public hearings officer speaks English and Spanish. One Michigan metropolitan planning organization (MPO) translated its I–496 community involvement materials into Spanish.

The New Jersey Department of Motor Vehicles (DMV) has administered drivers license tests in more than 14 languages for at least 10 years, including French, Greek, Korean, Portuguese, and Turkish. Other states conduct such tests in other languages. For example, Oregon DOT is in the process of having its tests

translated into Japanese and Vietnamese. USDOT recommends that state agencies share such information, to avoid the necessity of each doing every translation.

The New Mexico State Highway and Transportation Department has, with FHWA support, provided Spanish language translations of its Right-of-Way Acquisition and Relocation Brochures. The State also employs bilingual right-of-way agents capable of discussing project impacts in Spanish.

Oregon's DMV website provides online access to English and Spanish versions of its Driver Manual. It has also contracted with a local government to provide additional classes to Hispanic drivers on ''rules of the road'' after they gain their driver's licenses. The State of Oregon is developing a report on multilingual services provided by State agencies. The final document will be used by State agencies to enhance their existing programs, including expanding communication efforts to serve and protect all Oregonians. On the NHTSA web site, the Traffic Safety Materials Catalog page has an option to permit a search for materials for an Asian-American or Hispanic audience. This search will result in several publications that are available in Spanish or Chinese.

In Puerto Rico, LEP needs have been addressed by providing all government services, programs and activities in Spanish.

Tennessee DOT recipients in a geographical area where there is a significant (above 5%) population that usually speak a language other than English, must translate and post notices and other correspondence advising persons that their right to participate in any programs or activities receiving federal funding cannot be denied on the basis of nation origin.

Texas DOT has in the past provided forms in Spanish to assist LEP persons in filling out forms to request certified copies of vehicle titles. TxDOT also utilizes bilingual employees in its permit office to provide instruction and assistance to Hispanic truck drivers when providing permits to route overweight trucks through Texas. In the On the Job Training Supportive Services Program, Spanish language television has been used to get the information of the opportunities in the construction industry to people who have difficulty reading English.

Virginia DOT became aware that several Disadvantaged Business Enterprise (DBE) firms were about to be removed from construction projects in Northern Virginia because projects required certified concrete inspectors, and the DBE firms were having trouble complying because the concrete inspection test was only offered in English. VDOT used supportive services funding to have the training manual and test material translated into Spanish, and provided tutoring for the DBE firms. The Virginia State Police (VSP) maintain a written list of interpreters available statewide to troopers through the Red Cross Language Bank, as well as universities and local police departments. The VSP carry cards with Miranda rights set forth in several different languages.

The Colorado State Patrol has produced safety brochures in Spanish for farmer and ranchers. It has also printed brochures in Spanish pertaining to regulatory requirements for trucking firms.

In 1996, the Alabama Department of Transportation (ALDOT) was faced with the relocation of 14 Spanish-speaking families who were living in a trailer park in north Alabama. The State determined that most of the residents met the length of occupancy requirements for rental relocation housing payments. Through a right-of-way consultant who was under contract with ALDOT, an interpreter was hired from the University of Alabama—Birmingham to assist the relocation agent in explaining Uniform Relocation Act entitlements to the heads of families. The interpreter was on call throughout the relocation process to accompany the relocation agent whenever it was necessary to contact the displacees. The families were successfully relocated to Department of Social Services replacement housing. Several families moved into surplus Federal Emergency Management Agency mobile homes that were made available through a private buyer who gave the displacees the option of renting or entering into a purchase agreement.

Minnesota DOT (MnDOT) authored a manual entitled ''Public Involvement Procedures For Planning and Project Development'' that details Mn/DOT requirements to provide access to all residents of Minnesota under environmental justice standards. The manual takes a proactive approach to public involvement. It includes such things as publishing notices in non-English newspapers, printing notices in appropriate languages and providing translators at public meetings. Mn/DOT's Office of EEO Contract Management provides a Spanish language version of a brochure entitled ''Mn/DOT Construction Contracts: Labor Provisions for Contractor Employees'' to construction employees during reviews and upon request to Contractors for employee distribution. This pamphlet provides general guidelines to labor laws and Mn/DOT contract labor provisions. Mn/DOT's Office of EEO Contract Management is on call to provide Spanish language translation at Mn/DOT's Information Desk. In addition, telephone numbers are provided to persons who wish to speak directly to Spanish-speaking EEO Office employees.

Mn/DOT's Office of EEO Contract Management provides Spanish language translations in both written communications and oral interviews for labor investigations. In addition, the EEO Office provided written materials in Spanish for explanation of processes and procedures for such investigations.

Wisconsin DOT created a Motorist Study Manual Easy reader (3rd grade level, translated by the Janesville Literacy Council) version in English. It is creating one in Spanish and is considering Hmong. There are regular versions (6th grade level) in English, Spanish and Hmong. There is a Motorcycle Study Manual in English and Spanish, and a CDL (Commercial Drivers License) Study Manual in English and Spanish. Knowledge and Highway Sign Tests are provided in 13 languages besides English. Some languages have been available since the late 1970s. Bids are being prepared to update the bank of questions in non-English languages based on demand. Knowledge and Highway Sign Tests are provided via various audio means ranging from cassette tapes in English and Spanish to allowing bilingual translators to verbally present the questions in non-English languages based on demand. A pilot to evaluate automated knowledge test systems is underway at three DMV Service Centers. The pilot includes tests in English, Spanish, and on audiotape. These automated knowledge test systems allow testing in many languages. The Division of State Patrol is using a compact disk with commonly used phrases and sayings in languages other than English that is printable to a paper card, which then contains the phrase in an appropriate language for the LEP person who is interacting with the officer. The officer points to the appropriate column on the card. WIDOT also keeps a roster of employees who speak, read, or write non-English languages.

In Indiana, 15 Commercial Drivers License branches offer the CDL knowledge test orally, in a true/false format.

The Zuni Entrepreneurial Enterprises Inc. (ZEE) Public Transportation Program was designed to develop, implement, and maintain a

transportation system that provides needed linkages for Native Americans and other traditionally unserved/underserved persons in the service area to access needed vocational training and employment opportunities in order to enhance both the quality of life and the attainment and perpetuation of meaningful employment. The trip purposes served by the Zuni JOBLINKS project included education, employment, and job training. ZEE provided transportation of students to the University of New Mexico at Gallup, transportation of employees to their existing jobs in Gallup, as well as transportation for individuals requiring vocational rehabilitation and job training within the Pueblo of Zuni. The Project Director also took a number of steps to market the JOBLINKS service. He coordinated the broadcast of a radio spot on a local radio station in English and Zuni.

Seattle's Sound Transit's Link Light Rail to the Rainier Valley in south Seattle is an example of best practices. Demographically, the Rainier Valley is home to a high percentage of immigrant, refugee, low income, and disadvantaged Seattle residents. In addition to providing direct service benefits, Sound Transit has also provided the community with information they need to access the service in the appropriate languages. This has taken the form of translated brochures, outreach staff skilled in interpretation, and multi-language phone lines. etc.

The Washington, DC area's Metro transit system (WMATA) publishes pocket guides to the system in French, Spanish, German, and Japanese.

The following example, although it is focused on people who are deaf, is applicable to people who are LEP. Portland's Tri-Met transit system had a growing concern that access needs of people who are deaf or hard-of-hearing have not been fully addressed, due to more immediate ADA priorities such as putting lifts on buses and implementing paratransit plans. They contacted the Oregon Deaf Resources Center (ODRC) to discuss problems and issues and examine how to make public transportation more accessible to this segment of the disability community. One of the first things Tri-Met learned was that the main barrier in fixed-route travel for people who are deaf is difficulty in getting bus drivers to understand questions and provide information. In fact, people in Portland's deaf community reported that they seldom receive accurate, informative communication from transit drivers. The idea developed was to produce a set of pictograms that illustrate situations that typically arise during fixed-route travel, particularly those that are difficult to verbally communicate to people who are deaf or hard of hearing. The pictograms would be laminated and attached to the bus close to the driver to be readily available when needed. As with many improvements in accessibility, it is expected that enhanced communication capability will not only benefit people with hearing impairments, but will also improve communication with other passengers with disabilities, such as those who have cognitive impairments. Tri-Met submitted a proposal to Project ACTION and received funding to develop a standardized picture language for communicating various situations that can occur during fixed-route travel. Suggestions for the type of information to be included in the pictograms were solicited by from deaf communities across the country. The project also includes developing a transit personnel training video, created and produced by people who are deaf, to educate transit drivers about deaf culture. Another project product is an information booklet that illustrates the pictograms and hand signals.

In 1980 when Souris Basin Transportation in North Dakota first started, the illiteracy rate was high among the senior population in their area of operation. To help them identify the bus on which they were riding, SBT started using visual logos on the sides of the vehicles. They have now found that the illiteracy rate has dropped among the seniors, but the LEP population has grown. Therefore, SBT kept the logos on the vehicles. SBT has also added volunteers who speak languages other than English, such as Spanish, German, Norwegian, Swedish and French. These volunteers are only a phone call away from the drivers or staff that need help. Most of the volunteers are at the Minot State University Language Department.

Florida conducts CDL tests in any language needed, and provides interpreters if needed. Out of service warnings for trucks are issued in Spanish and English.

The Iowa Department of Transportation provides a Spanish version of the CDL knowledge test, using a touch screen computer. In addition, they have worked with Refugee Services of Des Moines, and with a local community college in educating Bosnian refugees to take the Commercial Motor Vehicle driving course. DOT especially recommends the idea of working with local community colleges to educate the LEP community in transportation matters.

Sample Notice of Availability of Materials and Services

''**FOR FURTHER INFORMATION CONTACT:** For hearing impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax [name] of [organization] at Phone: xxx–yyy–zzzz or Fax: xxx–yyy–zzzz.''

If there is a known and substantial LEP population which may be served by the program discussed in the notice, the notice should be in the appropriate non-English language.

Resources

U.S. Department of Justice, General LEP Guidance, August 2000.

U.S. Department of Health and Human Services, Limited English Proficiency Guidance.

U.S. Department of Health and Human Services, ''Cultural Competence.''

Environmental Protection Agency, ''Draft Translation and Interpretation Protocol for Promoting Access to EPA Programs, Services, and Information by Persons With Limited English Proficiency.''

Glossary of Transportation Terms, English-Spanish, 1994, Federal Highway Administration.

North American Emergency Response Guidebook (NAERG96), published jointly by the U.S. Department of Transportation, Transport Canada (TC), and the Secretariat of Communications and Transportation of Mexico, in English, French and Spanish.

National Directory of Asian Pacific American Organizations, 1999–2000, Organization of Chinese Americans, available through Philip Morris Management Corporation, 120 Park Av., NY, NY 10017.

Southeast Asian American Mutual Assistance Association Directory, 2000, Southeast Asia Resource Action Center, 1628 16th St., NW., Washington, DC 20009, 202–667–4690, www.searac.org.

Red Cross Language Bank.

''Highway Safety Needs of U.S. Hispanic Communities: Issues and Strategies,'' NHTSA, September 1995, DOT HS 808 373.

Since 1995, individual border States Division Offices of the Department's Federal Motor Carrier Safety Administration (formerly the FHWA Office of Motor Carriers) have translated a number of documents into Spanish to be used to educate Mexican carriers and drivers operating in the commercial zones. These subjects covered include meaning of out-of-service orders, minimum requirements to operate in the U.S., one page pamphlet that explains

the U.S. certification program, one page bulletins on various Federal Motor Carrier Safety Regulations, how to obtain an U.S. DOT vehicle identification number, and state specific safety regulations. The following brochures/guidance have been translated into Spanish and are currently distributed at the border or are being reviewed for possible distribution at the U.S. Southern border:

- FMCSRs—Drivers Guide to the FMCSRs (JJ Keller Publication).
- Drug and Alcohol Regulations (JJ Keller Publication).
- HM Basic Awareness Training Course (CD FMCSA Publication).
- MX Program Pamphlet (FMCSA Publication) [Currently Distributed]
- Road User Guide for North America (FHWA Publication) [Currently Distributed in English, Spanish, and French]
- Awake At the Wheel (FMCSA Publication) [Currently Distributed]

Materials developed for international use, such as those developed by FMCSA's ITS/CVO Technology Division for use with border partners Canada and Mexico. These include its pocket brochure in English, Spanish, and French. It is also developing Spanish video scripts.

The Canadian Council of Motor Vehicle Administrators is developing a trilingual chart for conducting roadside commercial vehicle inspection.

''La Seguridad de los Materiales Peligrosos,'' (The Safety of Dangerous Materials), RSPA, DOT.

The International Pictograms Standard, 414 SE Grand Avenue, Portland, Oregon 97214 USA, (503) 234–1400. ''Making conneXions for the Transit Customer,'' Breaking down illiteracy and other barriers to transit travel. A multi-media computer software program to help people with barriers to literacy become independent transit riders. The software program includes photos, video and voice narration to help clients learn how to best use public transit. Clients use the program at their learning level and pace, on their own, or with the help of a facilitator.

Data Sources

- Census
- Public Schools
- Community-based organizations
- Advocacy and special interest groups
- Indian tribes
- Immigrant aid organizations
- Welfare to Work organizations
- Job Access service providers
- State Migrant Coordinators
- State Refugee Coordinators
- Local refugee services organizations
- National, regional, and local ethnic advocacy organizations
- Unions that represent farmworkers, service workers, and entry level jobholders
- Legal services organizations
- Staff of elected officials in areas with substantial national origin minority communities
- National Environmental Policy Act (NEPA) related demographic studies
- Hispanic Data Handbook
- National Clearinghouse for Bilingual Education
- Center for Applied Linguistics, www.cal.org
- Hispanic Ministry of Catholic Dioceses, Catholic Social Services, Episcopal Bishop's Fund, Hebrew Immigrant Aid Society, and other faith-based entities that serve LEP people
- Language, Demographics and Population Studies Departments at local universities
- Commercial marketing data
- Minority marketing firms

Appendix A to DOT Guidance

DOT's Title VI regulation (49 CFR Part 21) states the following, in part:

§ 21.5 Discrimination prohibited.

(a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.

[FR Doc. 01–1745 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD17–01–001]

Annual Certification of Cook Inlet Regional Citizen's Advisory Council (CIRCAC)

AGENCY: Coast Guard, DOT.

ACTION: Notice of Recertification.

SUMMARY: Under the Oil Terminal and Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis, an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by the statute. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Cook Inlet, Alaska.

DATES: The effective period of this certification is from September 1, 2000 to August 31, 2001.

FOR FURTHER INFORMATION CONTACT: For general information regarding the CIRCAC or viewing material submitted to the docket, contact LT Ryan Murphy, Seventeenth Coast Guard District, Marine Safety Division, (907) 463–2817.

SUPPLEMENTERY INFORMATION: As part of the Oil Pollution Act of 1990. Congress passed the Oil Pollution Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, (the Act), Section 5002, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with the environmental concerns in the operation of terminal facilities and crude-oil tankers. Subsection 5002(o) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the terminal facilities in Cook Inlet (CI), in lieu of a council of the type specified in subsection 5002(d), if certain conditions are met.

The Act requires that the group enter into a contract to ensure annual funding, and that it receive annual certification by the President to the effect that it fosters the general goals and purposes of the Act, and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Cook Inlet. Accordingly, in 1991, the President granted certification to the Cook Inlet Regional Citizen's Advisory Council (CIRCAC). The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard and redelegated to the Commander, Seventeenth Coast Guard District.

On October 18, 2000, (65 FR 62407) the Coast Guard announced the availability of the application for recertification that it received from the CIRCAC and requested comments. Eight comments were received.

Discussion of Comments

Of the 8 comments received, all were supportive of recertification and noted the positive efforts, good communication, and broad representation of Cook Inlet communities as CIRCAC carries out its responsibilities as intended by the Act.

Upon review of the comments received regarding the CIRCAC's performance during the past year and the information provided by the RCAC in their annual report and recertification package the Coast Guard finds the CIRCAC meets the criteria established under the Oil Pollution Act, and that recertification in accordance with the Act is appropriate.

Recertification: By letter dated January 2, 2001, the Commander, Seventeenth Coast Guard certified that the CIRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on August 31, 2001.

Dated: January 2, 2001.

T.J. Barrett,

U. S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 01–1849 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–8680]

Coast Guard Advisory to Recreational Boaters on Carbon Monoxide Hazard Caused by Generator Exhaust

AGENCY: Coast Guard, DOT.

ACTION: Consumer advisory notice.

SUMMARY: The Coast Guard advises owners and operators of boats to turn off gasoline-powered generators with transom exhaust ports when the swim platform on the stern is in use. The Coast Guard further advises that swimmers should not enter the cavity of a boat designed with a generator emitting exhaust into the cavity between the swim platform and the transom of the vessel. The Coast Guard is concerned about the serious health risk from carbon monoxide poisoning and seeks to prevent loss of life and personal injury.

FOR FURTHER INFORMATION CONTACT: Philip Cappel, Chief, Recreational Boating Product Assurance Division, Commandant (G–OPB–3), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267–0988, e-mail *pcappel@comdt.uscg.mil.* Documents mentioned in this notice as being available in the docket, are part of docket USCG–2001–8680 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

SUPPLEMENTARY INFORMATION: The Coast Guard was made aware of the deadly combination of generator exhaust and swim platforms through a September 2000 National Institute for Occupational Safety and Health (NIOSH) study of houseboat carbon monoxide deaths on Lake Powell in Arizona. The study showed that the particular design of the stern swim platform on certain models of houseboats created a cavity between the hull of the vessel and the swim platform where the gasoline-powered generator exhaust port is located. When the generator is running the carbon monoxide buildup in this cavity, as well as the swim platform and rear deck space, is so high that it creates an imminent danger of death for anyone who enters the cavity even for a very short period of time. The common practice of keeping generators running to power air conditioning, entertainment centers, and electronic suites while moored or anchored has exacerbated the problem.

The Coast Guard has conducted a preliminary investigation into the problem and has issued a letter to all known houseboat manufacturers informing them of this hazard and soliciting their plans for reducing the danger.

The problem may not be confined to houseboats, however, since any boat with the generator exhaust located in the transom and a swim platform could present the same lethal hazard. The Coast Guard is expanding its investigation of this problem to include all types of boats.

Previous carbon monoxide warnings and educational materials have concentrated on the hazards created by the exhaust of the main propulsion engines while underway. Although these dangers still exist, the Coast Guard will develop new educational materials to emphasize the additional hazards of using a gasoline-powered generator, especially while not underway.

The Coast Guard warns all boaters that this is an extremely dangerous matter that could result in serious injury or death and advises all boat owners to heed this warning.

Dated: January 12, 2001.

John W. Whitehouse,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Operations.

[FR Doc. 01–1666 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping for Air Traffic Procedural Changes Associated With the New York/New Jersey/Philadelphia Metropolitan Airspace Redesign Project

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement and conduct scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA), Eastern Region, is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. 4332(2)(C) that the FAA intends to prepare an Environmental Impact Statement (EIS) for the proposed New York/New Jersey/Philadelphia Metropolitan Airspace Redesign Project. This Notice of Intent is published as required by the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, 40 CFR parts 1500–1508. The EIS will assess the potential environmental impacts resulting from proposed modifications to air traffic routings in the metropolitan New York and Philadelphia areas. Airports in this are include Newark International Airport, John F. Kennedy International Airport, La Guardia Airport, and the Philadelphia International Airport, as well as several regional (commuter) and general aviation use airports. The redesign project will examine the airspace surrounding area airports up to and including the high altitude enroute structure. The study area includes the State of New Jersey, and parts of New York, Connecticut, Pennsylvania and Delaware. All reasonable alternatives will be considered including a no-charge alternative/option. In order to ensure that all significant issues pertaining to the proposed action are identified, public participation, through public scoping meetings, will be held.

FOR FURTHER INFORMATION CONTACT: Ms. Moira Keane, Environmental Specialist, Federal Aviation Administration, Eastern Region Air Traffic Division, Airspace Branch, AEA–522.1, 1 Aviation Plaza, Jamaica, New York 11434–4809 (718) 553–4530.

SUPPLEMENTARY INFORMATION: The New York/New Jersey/Philadelphia Metropolitan Airspace Redesign Project encompasses a large geographic area, including the State of New Jersey, and parts of New York, Connecticut, Pennsylvania and Delaware. The airports in the study area are: Newark International Airport, John F. Kennedy International Airport, La Guardia Airport and Philadelphia International Airport as well as several regional (commuter) and general aviation use airports.

In response to the enormous flow of air traffic in the study area, the FAA is examining alternative ways to modify air traffic routes and procedures to reduce delays and pilot/controller workloads, while enhancing safety. The airspace redesign team is using sophisticated modeling tools to develop viable air traffic control (ATC) alternatives to current operations. The FAA will examine methods that will take advantage of new and emerging ATC technologies, improved performance characteristics of modern aircraft, as well as improvements in navigation capabilities. The proposed project may include, but will not necessarily be limited to the following alternatives: modification of existing procedures; identification of new conceptual alternative(s), and examination of an ocean routing alternative. The project is not associated with any airport development projects nor construction of any physical facilities.

As part of the airspace redesign effort, a FAA environmental team will provide detailed analyses that will be used to evaluate the potential environmental impacts in the study area. During scoping , and upon publication of a draft EIS and a final EIS, the FAA will be contacting and coordinating with federal, state, and local agencies, as well as the public, to obtain comments and suggestions regarding the EIS for the proposed project. The EIS will assess impacts and reasonable alternatives, including the ''no change'' alternative, pursuant to NEPA, FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, DOT Order 5610.1C, Procedures for Considering Environmental Impacts, and the President's Council on Environmental Quality (CEQ) Regulations implementing the provisions of NEPA, 40 CFR Parts 1500–1508.

Public Scoping Process: The FAA will utilize the scoping process as outlined in the Council on Environmental Quality (CEQ) Regulations and guidelines to facilitate public involvement early in the redesign process. Concerned individuals and agencies will be invited to express their views either in writing, by letter or by providing oral comments at a scoping meeting. The purposes of the scoping process and scoping meetings are: (1) To provide a description of the proposed action, (2) to provide an early and open process to determine the scope of issues to be addressed and to identify potentially significant issues or impacts related to the proposed action that should be analyzed in the EIS, (3) to identify other coordination and any permit requirements associated with the proposed action and (4) to identify and eliminate from detailed study those issues that are not significant or those that have been adequately addressed during a prior environmental review process.

The FAA will schedule a series of public scoping meetings. Each meeting will be held from 7 p.m. to 9 p.m. at specific sites located throughout the study area. Each of the meetings will begin with an overview of the project (7 p.m.–7:30 p.m.) and will be followed by an informal open house period (7:30 p.m.–8:30 p.m.). The open house portion of each public scoping meeting will include redesign displays and graphics and will provide an opportunity for one-on-one interaction between the representatives of the FAA and the general public. Following the open house part of the meeting, a Question and Answer session will be provided (8:30 p.m.–9 p.m.). Comments will be received via court reporter or written comment forms throughout the duration of the meeting.

In accordance with NEPA coordination requirements, the FAA will schedule three meetings that will be dedicated primarily to federal, state and local agency staff. These meetings will be scheduled from 1 to 3 p.m. at the Manhattan, NY, Philadelphia, PA and Trenton, NJ meeting locations. Although these meetings will be held primarily for the benefit of federal, state, and local agency staff, they will also be open to the public. The scoping period begins with this announcement. To ensure that all issues are identified, the FAA is requesting comments and suggestions on the project scope from all interested federal, state, and local agencies and other interested parties. In furtherance of this effort, the FAA has established an Internet Website that can be accessed at: http://www.faa.gov/region/aea/atsoeaaa/framedoc.htm. Additional information about the New York/New Jersey/Philadelphia Metropolitan Airspace Redesign Project, including the scoping meeting schedule and meeting locations can be found at this Internet site. Additionally, the FAA will be maintaining the following toll free number for general information: 1–866–EISLine (1–866–347–5463).

The FAA will accept written scoping comments through June 29, 2001. Such comments should be directed to the following address: New York/New Jersey/Philadelphia Metropolitan Airspace Redesign Project, c/o Mr. Mike Merrill, PRC Inc., 12005 Sunrise Valley Dr., Reston, VA 20191–3423. EMAIL: *merrill_michael@prc.com*.

Issued in Jamaica, New York on January 5, 2001.

F.D. Hatfield,

Manager, Air Traffic Division.

[FR Doc. 01–1859 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–04]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 12, 2001.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to §§ 11.85 and 11.91.

Issued in Washington, DC, on January 16, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 30173.

Petitioner: Raytheon Aircraft Co.

Section of the 14 CFR Affected: 14 CFR § 25.785(b) and 25.562(c)(3), (c)(5), and (c)(6).

Description of Relief Sought: To allow exemption from the injury criteria aspects of dynamic testing for multiplace side-facing seats to be installed on the Raytheon Hawker Horizon Model 40000.

[FR Doc. 01–1676 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–05]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 12, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC, on January 16, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–8165.

Petitioner: The Jet Center, Garret Aviation Services.

Section of 14 CFR Affected: 14 CFR § 25.813(e).

Description of Relief Sought: To permit The Jet Center, Garret Aviation Services, to install doors in petitions between passenger compartments on Bombardier Model BD–700–1A10 airplanes used for corporate transportation.

Dispositions of Petitions

Docket No.: FAA–2000–8176.

Petitioner: VARIG S.A.

Section of 14 CFR Affected: 14 CFR § 145.47(b).

Description of Relief Sought/Disposition: To permit VARIG to use the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial (INMETRO) in lieu of the calibration standards of the U.S. National Institute of Standards and Technology (NIST) to test its inspection and test equipment.

Grant, 11/30/00, Exemption No. 6552B

Docket No.: FAA–2000–8179.

Petitioner: Fairchild Aircraft Incorporated.

Section of 14 CFR Affected: 14 CFR § 91.531(a)(3).

Description of Relief Sought/Disposition: To permit Fairchild to conduct production and experimental test flights in SA227–CC and SA227–DC

Metro 23 airplanes without a pilot designated as second in command (SIC).

Grant, 11/28/00, Exemption No. 5367F

Docket No.: FAA–2000–8180.
Petitioner: Regional Airline Association.
Section of 14 CFR Affected: 14 CFR § 61.3(a) and (c).
Description of Relief Sought/ Disposition: To permit the establishment of special procedures that enable an operator to issue to its flight crewmembers, on a temporary basis, confirmation of any required crewmember certificate based on information contained in the operator's approved record system for RAA member carriers and similarly situated 14 CFR part 135 air carriers.

Grant, 11/28/00, Exemption No. 5560C

Docket No.: FAA–2000–8215.
Petitioner: ProJet International Express, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit PIE to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 12/05/00, Exemption No. 7391

Petition for Exemption

Docket No.: FAA–2000–8165.
Petitioner: The Jet Center, Garret Aviation Services.
Regulations Affected: 25.813(e).
Description of Petition: To exempt The Jet Center, Garret Aviation Services, from the requirements of 14 CFR 25.813(e) to permit installation of doors in partitions between passenger compartments on Bombardier Model BD–700–1A10 airplanes used for corporate transportation.

[FR Doc. 01–1677 Filed 1–19–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2001–06]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 12, 2001.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR §§ 11.85 and 11.91.

Issued in Washington, DC, on January 16, 2001.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8188.
Petitioner: Direct Air, LLC.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Direct Air to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 12/08/2000, Exemption No. 7399

Docket No.: FAA–2000–8433.
Petitioner: New Air Helicopters.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit NAH to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 12/08/2000, Exemption No. 6884A

Docket No.: FAA–2000–8429.
Petitioner: North Star Air Cargo, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit North Star to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 12/08/2000, Exemption No. 6878A

Docket No.: FAA–2000–8432.
Petitioner: Air Vegas, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Vegas to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 12/08/2000, Exemption No. 6588B

Docket No.: FAA–2000–8049.
Petitioner: CareFlite.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit CareFlite to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 12/08/2000, Exemption No. 6877A

Docket No.: FAA–2000–8147.
Petitioner: Flight Line Aviation, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit FLA to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.

Grant, 12/08/2000, Exemption No. 6874A

Docket No.: FAA–2000–8000.
Petitioner: Delta Air Lines, Inc.
Section of 14 CFR Affected: 14 CFR § 135.143(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit Delta to substitute a qualified and authorized

check airman for an FAA inspector when an inspector is not available to accomplish the required observation during the scheduled operating experience flight legs of a qualifying pilot in command (PIC) who is completing initial or upgrade training.

Grant, 12/08/2000, Exemption No. 7376A

Docket No.: FAA–2000–8016.

Petitioner: Adams, Jerry L., et al.

Section of 14 CFR Affected: 14 CFR § 121.383(c).

Description of Relief Sought/ Disposition: To permit those individuals to act as pilots in operations conducted under part 121 after reaching their 60th birthdays. Please note that the FAA has assigned a new docket number to this project (FAA–2000–8016; previously Docket No. 30040).

Denial, 12/13/2000, Exemption No. 7405

[FR Doc. 01–1678 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Field Approval Process

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of a meeting to discuss public concerns with the FAA Field Approval Process.

DATES: The meeting will be held on February 23, 2001, 9 A.M. to 4 P.M. Arrangement for presentations must be made by February 16, 2001.

ADDRESSES: The meeting will be held at the FAA 3rd Floor Auditorium, 800 Independence Ave, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Wayne Fry, Federal Aviation Administration, AFS–300, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 493–5228 fax (202) 267–5115.

SUPPLEMENTARY INFORMATION: The meeting will be held on February 23, 2000, from 9 A.M. to 4 P.M., at the FAA 3rd floor Auditorium, Washington, DC. The agenda will include: Field Approval Process Improvement.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by February 16, 2001, to present oral statements at the meeting. To make arrangements to present oral statements, please contact the person listed under the head for **FOR FURTHER INFORMATION CONTACT**. If you are in need of assistance or require a reasonable accommodation for the meeting please contact the person listed under the heading for **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 17, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 01–1857 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 01–04–C–00–EUG To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mahlon Sweet Field, Submitted by the City of Eugene, Mahlon Sweet Field, Eugene, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Mahlon Sweet Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before February 21, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Noble, Acting Airport Manager, at the following address: 28855 Lockheed Drive; Eugene, Oregon 97402.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Mahlon Sweet Field, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 01–04–C–00–EUG to impose and use PFC revenue at Mahlon Sweet Field, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 11, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Eugene, Mahlon Sweet Field, Eugene, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 28, 2001.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2001.

Proposed charge expiration date: June 1, 2003.

Total requested for use approval: 3,255,267.

Brief description of proposed project: Runway 3/21 Safety Area Improvements; Taxiway Extension and Ramp Construction; Terminal Improvements; B Gate South Ramp Reconstruction; Ramp Pavement Rehabilitation; Land Acquisition; Jet Bridge.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Operations by Air Taxi/Commercial Operators utilizing aircraft having a maximum seating capacity of less than twenty passengers when enplaning revenue passengers in a limited, irregular/ nonscheduled, or special service manner. Also exempted are operations by Air Taxi/Commercial Operators, without regard to seating capacity, for revenue passengers transported for student instruction, non-stop sightseeing flights that begin and end at the airport and are conducted within a 25 mile radius of the same airport, fire fighting charters, ferry or training flights, air ambulance/medivac flights and aerial photography or survey flights.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports

Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Mahlon Sweet Field.

Issued in Renton, Washington on January 11, 2001.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–1674 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

TSO–C77b, Gas Turbine Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of technical standard order.

SUMMARY: This notice announces the availability of Technical Standard Order (TSO) C77b. This TSO prescribes the minimum performance standards that gas turbine auxiliary power units (APUs), commonly used in commercial aircraft, must meet in order to be identified with the TSO marking.

EFFECTIVE DATE: January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Mark A. Rumizen, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7113, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

The standards of this TSO will apply to all APUs used for any new application submitted after the effective date of this TSO. APUs currently approved under TSO–C77 or TSO–C77a authorization may continue to be manufactured under the provisions of their original approval. However, under § 21.611(b) of the Federal Aviation Regulations, any major design change to an APU previously approved under TSO–C77 or TSO–C77a would require a new authorization under this TSO. The general layout of this document complies with the updated TSO format.

How To Obtain Copies

A copy of the TSO–C77b may be obtained via Internet (http:/www.faa.gov/avr/air/air100/100home.htm) or by request from the office listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts on December 20, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate Aircraft Certification Service.

[FR Doc. 01–1858 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Guidance on Longitudinal Telecommunications Installations on Limited Access Highway Right-of-Way

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This document publishes guidance on the installation of telecommunications on limited access highway right-of-way. This guidance was distributed to the FHWA Resource Centers and Division offices on December 22, 2000. These materials are the result of consultations with the Federal Communications Commission with regard to the potential impact of the Telecommunications Act of 1996 on such installations.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Jones, Intelligent Transportation Systems (ITS) Joint Program Office, (202) 366–4651 or Ms. Beverly Russell, Office of the Chief Counsel, (202) 366–1355; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC. 20590–0001. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.* In addition this document is available on the ITS web sit at: *http://www.its.dot.gov*.

Background

Guidance published in this **Federal Register** notice is provided for information purposes. Specific questions on any of the material published in this notice should be directed to the appropriate contact person named in the caption, **FOR FURTHER INFORMATION CONTACT**.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 11, 2001.

Kenneth R. Wykle,

Federal Highway Administrator.

The text of the FHWA guidance memorandum dated December 22, 2000 follows:

Information: Guidance on Longitudinal Telecommunications Installations on Limited Access Highway Right-of-Way

Anthony R. Kane, Executive Director, HOIT–1.

Directors of Field Services

Resource Center Managers

Division Administrators

A number of States have altered their utility accommodations policies to allow longitudinal access to their limited access highway Right-of-Way (ROW) for telecommunications installations; usually fiber optic cable. Several of these installations to date have been public-private partnerships with the telecommunications industry generally referred to as ''Shared Resource'' agreements. In December 1999, the Federal Communications Commission (FCC) issued an opinion in the Minnesota Department of Transportation (DOT) case involving such a partnership that defined the FCC's interpretation of the Telecommunications Act of 1996 (TCA) and its application to the Minnesota agreement, which has potentially broad implications for transportation agencies.

As a result of the FCC's opinion, the Federal Highway Administration (FHWA) engaged in a discussion with the FCC to clarify how these partnerships and other similar telecommunications installations should be conducted to avoid conflict with the TCA and be consistent with FHWA's requirements for highway safety and ROW management. These discussions have culminated in an approach that considers both the requirements of the transportation industry and its concern for highway safety, and the FCC's concern with the implementation of the TCA. This approach is documented in two letters. A letter from the FHWA Administrator to the FCC defines the elements of the guidance pertaining to access to freeway ROW, and a letter to the FHWA Administrator from the Chief of the Common Carrier Bureau of the FCC defines the competitive elements of the

guidance based upon the access restrictions defined by the FHWA.

This is only guidance to assist States in the execution of Shared Resource agreements. Agreements can deviate from these guidelines and still be in conformance with the TCA. However, this guidance is intended to clarify some of the important requirements of the TCA with regard to competition in the telecommunications industry.

Background

Over the past decade, a number of States have implemented Shared Resource agreements with private telecommunications companies. ''Shared Resource'' is a term identifying public-private arrangements involving the sharing of the public resource of roadway ROW and the private resource of telecommunications expertise and capacity.[1] Most commonly, private telecommunications providers are granted access to limited access highway ROW for their own telecommunications infrastructure (principally fiber optics conduits and cable) in exchange for providing telecommunications infrastructure to public agencies.

Shared Resource agreements can be a beneficial, cost-effective means for State DOT's to obtain the telecommunications infrastructure necessary for Intelligent Transportation Systems (ITS). For example, telecommunications capacity is essential for the integration of both equipment and data components required for State and metropolitan traffic operations systems. Such systems may include traffic control devices (*e.g.* traffic signals), closed circuit television, radar detectors, pavement sensors, etc.

The United States Department of Transportation (U.S. DOT) and the FHWA are responsible for highway safety (23 U.S.C. 401), the management of ROW on the interstate system (23 U.S.C. 109(1) and 111(a)), and implementation of the national ITS program. The FHWA's implementing regulations for utility accommodation are applicable to shared resource agreements and other telecommunications installations. 23 CFR part 645, subpart B. The regulations, in part, require that States accommodate utilities in a manner which does not impair the highway or adversely affect highway traffic safety. 23 CFR 645.211(a). The regulations explicitly require that States examine the effect of utility installation on ''safety, aesthetic quality, and the cost or difficulty of highway and utility construction and maintenance.'' 23 CFR 645.211(b). Though, pursuant to regulations, ROW management responsibilities have largely been devolved to the States, implementation of these responsibilities must remain consistent with FHWA regulations, not only those at 23 CFR part 645, but also those at 23 CFR part 710 governing the interstate ROW.

The FHWA also recognized that the Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56 (1996) (codified as amended in scattered sections of title 47 of the United States Code (U.S.C.)), had the potential to impact the installation of telecommunications on freeways. Specifically, the Act prohibits State and local governments from implementing any statute, regulation, or legal requirements which have the effect of prohibiting any entity from providing telecommunications service. 47 U.S.C. 253 (a). However, the section containing this prohibition has two exemptions. First, the prohibition does not affect the ability of the States to impose, on a competitively neutral basis, requirements necessary to preserve and advance universal telecommunications service, protect public safety and welfare, ensure quality of telecommunications service, and safeguard the rights of consumers. 47 U.S.C. 253 (b). Second, the prohibition also does not affect ''the authority of a State or local government to manage the public ROW or to require fair and reasonable compensation from telecommunication providers, on a competitively neutral and nondiscriminatory basis, for use of public right-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.'' 47 U.S.C. 253 (c).

In October 1996, the FHWA issued guidelines on the anticipated effects of the TCA on utility accommodations.[2] In these guidelines, the FHWA recommended that the State highway departments desiring to allow one or more telecommunications companies on interstate ROW make their intentions publicly known and give all telecommunications companies the opportunity to compete.

Guidance on Access to Freeway Right-of-Way

State transportation departments are obviously very knowledgeable about FHWA regulations on safety, utility accommodations, and ROW management. However, the FCC's decision on the Minnesota Shared Resource agreement created concerns and uncertainties, notably with regard to dealing with the competitive effects of such agreements on the telecommunications industry and their relationship to the management of ROW and public safety. To alleviate this concern, the U.S. DOT has worked closely with the FCC to develop guidance for States that wish to engage in shared resource and other telecommunications projects.

When States allow telecommunications companies onto the freeway ROW, they are potentially invoking the TCA. The objective of the TCA is to foster competition in the industry. Thus, the TCA contains significant measures to allow new potential competitors an opportunity to compete with the large incumbent ''Baby Bells'' that have dominated the industry for nearly 100 years. These new competitive measures of the TCA should be considered by States when they choose to allow telecommunications companies onto their freeway rights-of-way.

This guidance identifies points for negotiating, reaching/implementing Shared Resource agreements and other telecommunications installations that involve entering limited access highways (freeways) for the safe installation of fiber optic facilities. In addition, this guidance provides potential criteria for implementing these agreements in a manner that the FCC Common Carrier Bureau has already indicated would be acceptable and likely to maintain a competitively neutral environment in the telecommunications industry in accordance with the TCA.

It should be noted that the telecommunications competitive environment varies across the country. Thus, the circumstances concerning what is fair and equitable can vary from region to region. Therefore, it is reasonably foreseeable that States will develop agreements for telecommunications longitudinal access to freeway ROW that differ from the suggested guidelines, and that those agreements would still be in compliance with the TCA requirements for competitive neutrality in the contractual actions of States.

[1] United States Department of Transportation, Shared Resources: ''Sharing Right-of-Way or Telecommunications,'' Final Report, Publication No. FHWA–PO–96–0015 (April 15, 1996), This document is available online at the web site: *http://www.itsdocs.fhwa.dot.gov* as item no. 1863, 90 pages.

[2] Memorandum from Gerald L. Eller, Director, FHWA's Office of Engineering to Regional Federal Highway Administrators on the Effects of the Telecommunications Act on Utility Accommodation, October 25, 1996.

While these guidelines will not prevent a State's actions from being challenged, the U.S. DOT and the FCC Common Carrier Bureau agree that these guidelines will help States satisfy their obligation under the applicable laws and provide a reasonable level of assurance that a State's actions will not be preempted.

The attachment, ''Background Discussion on Guidance: Telecommunications Installations, Limited Access Highway Right-of-Way,'' (available at: *www.its.dot.gov*) presents a detailed discussion of the FCC's ruling on the Minnesota case, and the rationale for these guidelines which have been developed in cooperation with the FCC.

If a State chooses to allow longitudinal access for fiber optic facilities installation on its freeway ROW pursuant to its Utility Accommodations Policy, it is recommended that the following guidelines apply to that installation.[3] Other provisions factoring in regional characteristics should be considered in agreements with the contractor that specifies details as to how particular issues necessary to protect the public safety are being handled on a project by project basis (*e.g.* topographical and other obstructions encountered, special working conditions and limitations, etc.).

1. In these guidelines, it is understood that the State retains the right and responsibility to manage its freeway ROW. Reasonable, nondiscriminatory time, place, and manner restrictions, including but not limited to traditional permitting conditions, may be placed on the design, installation, operation, and maintenance of fiber optic facilities.

2. All construction should be done in that portion of the ROW that is located furthest from the traveled roadway to the degree feasible, and should be accomplished in accordance with the Manual on Uniform Traffic Control Devices, per 23 CFR part 655.603.

3. If all construction vehicles, equipment, and personnel can be located outside the clear zone on the freeway, as defined in the AASHTO Roadside Design Guide and adopted by FHWA in Federal Aid Policy Guide, Par. 16(a)(3) NS 23 CFR part 625, except for ingress and egress, the State may use the freeway ROW for fiber optic facilities installation as frequently as reasonably necessary to satisfy the requirements of the State, and the needs of the telecommunications providers.[4] A State may limit construction so that there is no more than one installation project underway at any given time on any major segment of the freeway.

4. If construction vehicles, equipment, and personnel cannot be located out of the freeway clear zone, then the State may restrict fiber optic facilities installation to only one time on that area of the freeway where construction would occur within the clear zone. No further installation needs to be allowed on that segment until such time as required by the end of the useful life of the fiber optic facilities, or if the existing capacity is exhausted or existing conduit is full. Existing fiber and conduit capacity will be deemed exhausted whenever the State and the contractor mutually determine that a bona-fide request for dark fiber, conduit space, or a bona-fide request for any other transmission facilities or service cannot be granted. Additional installation at this time will be subject to reasonable nondiscriminatory State requirements, *e.g.*, per #1 above.

5. A State may restrict the location of all the above ground equipment to the edge, or off of the ROW to allow access to that equipment for maintenance from service roads or other non-freeway access if feasible, as determined by the State. Such restrictions should be nondiscriminatory.

Guidance on Competitive Issues

To assist States in meeting the intent of the TCA with regard to maintaining a competitively neutral position in the process of developing and implementing a Shared Resource or other telecommunications installations project, the FCC Common Carrier Bureau suggests the following principles in the development of these projects. These principles should be considered whenever a State decides to limit further installations of fiber optic facilities on its ROW, whether in or out of the clear zone.

1. The contractor should be selected through an open, fair, nondiscriminatory, competitive process.

2. Having selected a contractor, other interested third-party telecommunications companies should be allowed the opportunity to have their fiber optic facilities installed in conjunction with any installation of fiber optic facilities by the contractor. The State may make the contractor the sole party responsible for all installation work done at such times, and require that other third party telecommunications companies contract with that contractor for installation of their fiber optic facilities when their facilities are installed in conjunction with those of the contractor. In such cases, the contractor's charges, terms and conditions for installation should be fair, reasonable, and nondiscriminatory and may include a reasonable profit. The State should give potentially interested third parties reasonable notice of the anticipated or planned opening of the right-of-way. The notice period should reflect the time reasonably required by third parties to develop business plans and obtain financing. Notice can be accomplished through publication and dissemination of a construction schedule for the project. Such publication and dissemination should be reasonably calculated to provide potentially interested third parties with actual notice of the schedule.

3. The contractor should install spare fiber and empty conduit, adequate to accommodate reasonably anticipated future demand, whenever fiber optic facilities cannot be installed outside the clear zone. Each section of fiber/conduit within the clear zone should have connection points (manhole or cabinets) at each end outside the clear zone where third parties can access the conduit or interconnect with facilities in the conduit at their option. All rates, terms and conditions for interconnection and/or use of space in the conduit should be fair, reasonable, and nondiscriminatory and may include a reasonable profit.

4. The contractor should be required to sell fiber on an ''Irrevocable Right of Use'' (IRU)[5] basis at rates and subject to terms and conditions that are just, reasonable, and nondiscriminatory. The contractor's charges for such facilities may include a reasonable profit.

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[3] Pursuant to 23 C.F.R. 645.211, states are required to submit utility accommodations plans for approval.

[4] There is no intention for this guidance to cause States to determine the exact location of the clear zone in any particular area. In most instances, whether a contractor can locate the construction outside the clear zone should be discernable for most portions of the freeway by inspection of a State's existing data on its ROW. The theoretical width of the clear zone, as defined in the roadside Design Guide, can vary substantially depending on the topography of the land involved. Therefore, occasional instances of construction within the clear zone for short distances because of topographical features of the terrain or other factors, can be treated as if the construction were taking place outside the clear zone at the discretion of the State. In such cases the competitive safeguards defined in 3 below should not be necessary.

[5] The commission has defined an IRU interest in a communication facility as ''a form of acquired capital in which the holder possesses an exclusive and irrevocable right to use the facility and to include its capital contribution in its rate base, but not the right to control the facility or, depending on the particular IRU contract, any right to salvage''. Reevaluation of the Depreciated-Original-Cost Standard in Setting Prices For Conveyances of Capital Interests in Overseas Communication Facilities Between or Among U.S. Carriers, CC Docket No. 87–45, Report and Order, 7 FCC Rcd 4561 at 4564, n.1 (1992).

5. The contractor should be required to offer facilities and services for resale at rates and subject to terms and conditions that are just, reasonable, and nondiscriminatory and may include a reasonable profit.

6. The agreement with the contractor should require that the contractor comply with the terms defined above, and give third parties the right to challenge the contractor's compliance with the appropriate elements of these terms dealing with third party access before an independent entity which does not benefit directly from the arrangement with the contractor. The independent entity should have the authority to order the contractor to comply with these terms. A State public utilities commission, or independent arbitrator, might serve in this capacity. In this regard, prompt resolution of such issues can be critically important to the development of competition.

7. It is substantially preferable that the contractor be a wholesaler of telecommunication in order to minimize competitive concerns, as opposed to being a retail telecommunications service and facilities provider either directly or through an affiliated entity. This reduces the potential for anti-competitive pricing that could violate section 253 of the TCA. However, if the contractor does provide retail telecommunications service directly or through an affiliated entity, all rates, terms and conditions for its retail service should be fair, reasonable, and nondiscriminatory.

(The provision of retail service by a contractor creates the potential for a ''price squeeze'' with the contractor overcharging competitors, and its retail arm, for wholesale services and facilities, while competing vigorously on price for retail services. Thus, if the contractor provides retail services, the contractor's charges for services and facilities used by potential retail competitors may require careful scrutiny to avoid potential violations of the TCA.)

Conclusion

These guidelines shall not be used as evidence of any alleged or asserted legal rights with regard to access to freeway ROW, but are being provided to assist States in developing their agreements for telecommunications installations on freeway ROW, particularly dealing with the nondiscriminatory, pro-competitive requirements of the TCA.

The information provided in this discussion of longitudinal access to freeway ROW and the impact of the TCA is provided for guidance purposes only. Local conditions in the telecommunications competitive environment may well dictate other approaches to satisfying the competitive neutrality provisions of the TCA. There is no ''right answer'' that will serve every situation. However, the points discussed above provide some insight into the thinking of the FCC Common Carrier Bureau on these issues, and can be used to assist States in formulating their approach to the subject of longitudinal access to freeway ROW for telecommunications.

The FHWA anticipates revising these guidelines periodically as information is obtained on the practicality and reasonableness of these recommendations.

Any questions on the guidelines should be addressed to William S. Jones, Intelligent Transportation System Joint Program Office, telephone number (202) 366–2128, Washington, DC 20590, e-mail: *WilliamS.Jones@fhwa.dot.gov.*

[FR Doc. 01–1644 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–8611]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on proposed collections of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before March 23, 2001.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh St. SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 10:00 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of the request for collection of information may be obtained at no charge from Dr. William J.J. Liu, NHTSA, 400 Seventh Street, SW., Room 5313, Washington, DC 20590.

Dr. Liu's telephone number is (202) 366–4923. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

49 CFR 571.218, Motorcycle Helmets

Type of Request—Reinstatement of clearance.

OMB Clearance Number—2127–0518.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three years from date of approval.

Summary of the Collection of Information—NHTSA has issued

Federal Motor Vehicles Safety Standard No. 218, Motorcycle Helmets, which establishes minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users. Standard No. 218 requires that each helmet shall be labeled permanently and legibly (S5.6), in a manner such that the label(s) can be read easily without removing padding or any other permanent part.

Description of the Need for the Information and Proposed Use of the information—NHTSA requires labeling information to ensure that helmet owners have important safety information. The information currently provided on the helmet from the labels includes that manufacturer's name or identification, model, size, month and year of manufacture, shell and liner construction of the helmet. The owners will also receive important information on caring for the helmet from the labels. Finally, the DOT symbol signifies the manufacturer's certification that the helmet meets all the requirements in the standard. Labeling is necessary for NHTSA to identify the helmet, particularly, if the helmet failed the compliance tests.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)—NHTSA estimates that 32 manufacturers of motorcycle helmets offer their products for sale in the United States. The frequency of response to the collection of information depends on the number of helmets that each manufacturer sells.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—Currently, 32 manufacturers produce, on the average, a total of approximately 1,600,000 motorcycle helmets a year. NHTSA estimates that the total annual information collection burden on all manufactures is 5,333 hours. NHTSA estimates that ''annualized costs on all manufacturers is $640,000.''

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued: January 17, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–1852 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–8591; Notice 1]

Bridgestone/Firestone, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone, Inc., has determined that approximately 33,000 P235/75R15 Widetrack Wintertrax tires produced in the Sao Paulo, Brazil plant and 1,400 P235/75R15 Lemans A/T tires produced in the Decatur, Illinois plant do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New Pneumatic Tires.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone has petitioned for a determination that the noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliance with Section 4.2.1(c) relates to maximum load rating for a particular tire size. The Sao Paulo plant produced 33,000 P235/75R15 Widetrack Wintertrax tires from April 2000 through October 2000. The affected tires had the maximum load mismarked. The actual marking was: Max Load 650 Kg (1433 lbs.) @ 300 Kpa (44 psi). The correct marking should have been: Max Load 920 Kg (2029 lbs.) @ 300 Kpa (44 psi).

The affected P235/75R15 Widetrack Wintertrax tires meet all requirements of FMVSS No. 109 except the markings pertaining to maximum load rating.

The noncompliance with Section 4.3.4(a) relates to the maximum inflation pressure of the tire. The Decatur plant produced 1,400 P235/75R15 Lemans A/T tires during DOT weeks 36, 37 and 38 of the year 2000. The affected tires had the inflation pressure (English units only) mismarked on the sidewall opposite the DOT serial number. The actual marking was: Max Load 990 Kg (2183 lbs.) @ 340 Kpa (41 psi). The correct marking should have been: Max Load 990 Kg (2183 lbs.) @ 340 Kpa (50 psi). Bridgestone/Firestone states that this was a single mold issue and the markings in that mold have been corrected.

The affected P235/75R15 Lemans A/T tires meet all requirements of FMVSS No. 109. They have the correct inflation in metric units, and the recommended operation inflation pressure is defined by the placard on the vehicle door or within the owner manual.

Bridgestone/Firestone, Inc., submits that the noncompliance is inconsequential as it relates to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: (February 21, 2001).

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 17, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–1851 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–8133; Notice 2]

Panoz Auto Development Company; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

This notice grants the application by Panoz Auto Development Company of Hoschton, Georgia, for a temporary exemption from paragraph S4.1.4 of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.* The basis of the application is that compliance will cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.

Notice of receipt of the application was published on October 25, 2000, and an opportunity afforded for comment (65 FR 63913).

Panoz received NHTSA Exemption No. 93–5 from S4.1.4 of Standard No.

208, an exemption for two years which was initially scheduled to expire August 1, 1995 (58 FR 43007). It applied for, and received, two two-year renewals of this exemption (61 FR 2866; 63 FR 16856), the last of which expired March 1, 2000. Panoz now seeks a new exemption from S4.1.4 on hardship grounds, that would expire March 31, 2003. This exemption would apply to the Panoz Roadster but not to the company's other product, the Panoz Esperante, which, during the term of the last exemption, has been designed to comply with S4.1.4.

Panoz's original exemption was granted pursuant to the representation that its Roadster would be equipped with a Ford-supplied driver and passenger airbag system, and would comply with Standard No. 208 by April 5, 1995, after estimated expenditures of $472,000. As of the time of its application, April 1993, the company had expended 750 man hours and $15,000 on the project.

According to its 1995 application for renewal,

> Panoz has continued the process of researching and developing the installation of a driver and passenger side airbag system on the Roadster since the original exemption petition was submitted to NHTSA on April 5, 1993. To date, an estimated 1680 man-hours and approximately $50,400 have been spent on this project.

At that time, Panoz used a 5.0L Ford Mustang GT engine and five speed manual transmission in its car. Because ''the 1995 model year and associated emission components were revised by Ford,'' this caused

> a delay in the implementation of the airbag system on the Roadster due to further research and development time requirements and expenditure of additional monies to evaluate the effects of these changes on the airbag adaptation program.

Shortly before filing its application for first renewal in 1995, Panoz learned that Ford was replacing the 5.0L engine and emission control system on the 1996 Mustang and other passenger cars with a modular 4.6L engine and associated emission components. The 1995 system did not meet 1996 On-Board Diagnostic emission control requirements, and Panoz was faced with using the 1996 engine and emission control system as a substitute. The majority of the money and man hours at that time had been spent on adapting an airbag system to the 5.0L engine car, and the applicant had to concentrate on adapting it to a 4.6L engine car. Panoz listed eight types of modifications and testing necessary for compliance that would cost it $337,000 if compliance were required at the end of a one-year period. It asked for and received a two-year renewal of its exemption.

However, between 1995 and 1997, Panoz found integration of the 4.6L engine into its existing chassis more difficult than anticipated, primarily because the 4.6L was 10 inches wider than the engine it replaced. This required a total redesign of the chassis, requiring expenditure of ''a significant amount of resources.'' Simultaneously, Panoz designed the vehicle to allow for the integration of the Ford Mustang driver-side and passenger-side airbag systems. Panoz described these steps in some detail and estimates that between May 1995 and August 1997 it spent 2200 man-hours and $66,000 on these efforts. In the same time period, it spent $47,000 in static and dynamic crash testing of a 4.6L car related to airbag system development. Panoz concluded by describing the additional modifications and testing required to adapt the Ford system to its car. These costs totaled $358,000. In 1997, the company argued that a two-year renewal of its exemption would provide time to generate sufficient income (approximately $15,000 a month through sales of vehicles and private funding) to fund the modifications and testing. After August 1997, Panoz spent an additional 1779 man hours and $87,375 in airbag development for the Roadster, a large portion of which was to adapt the 1997–98 Ford Mustang mechanical system. In September 1998, NHTSA issued its Notice of Proposed Rulemaking (NPRM) on advanced airbags which would have required Panoz to begin the phase-in of the new system as of September 1, 2002. Panoz decided that the mechanical airbag system it was developing could not comply with the proposed advanced system. It also lacked the resources to develop two systems simultaneously, so it turned its development efforts towards the advanced system, which will be in its new model, Esperante. In November 1999, NHTSA issued a Supplemental NPRM under which implementation of the advanced airbag rule would be delayed for small manufacturers until September 1, 2005 (subsequently adopted in the final rule of May 2000). This resulted in Panoz's resumption of efforts to adapt the Ford Mustang airbag system to its Roadster. However, with its 1999 models, Ford had replaced the mechanical airbag system with an electronic one, ''which dictated that Panoz would have to conduct further crash testing in order to properly calibrate the [Restraint Control Module] for application on the AIV Roadster.'' Panoz intends to have the electronic system adapted by the end of the exemption it has requested. The foregoing is a summary of Panoz's compliance efforts which are set forth in detail in its application.

In sum, Panoz has been exempted from compliance with the airbag requirements for all passenger cars that it manufactured between August 1, 1993, and March 1, 2000, approximately 6½ years. These, however, total only 178 units.

At the time of its original petition, Panoz's cumulative net losses since incorporation in 1989 were $1,265,176. It lost an additional $249,478 in 1993, $169,713 in 1994, $721,282 in 1995, and $1,349,241 in 1996. Its losses continued in 1997, 1998, and 1999, respectively $3,253,111, $4,264,689, and $2,996,903. Thus, Panoz's losses for the years that the exemption was in effect, 1993–99, total $13,004,417.

The applicant reiterated its original arguments that an exemption would be in the public interest and consistent with the objectives of traffic safety. Specifically, The Roadster is built in the United States and uses 100 percent U.S. components, bought from Ford and approximately 95 other companies (''at least 250 employees'' of which ''remain involved in the Panoz project''). Panoz provides employment for 47 full time and three part time employees. The company now has 33 U.S. dealers. The Roadster is said to provide the public with a classic alternative to current production vehicles. It is the only vehicle that incorporates ''molded aluminum body panels for the entire car,'' a process which continues to be evaluated by other manufacturers and which ''results in the reduction of overall vehicle weight, improved fuel efficiency, shortened tooling lead times, and increased body strength.'' With the exception of S4.1.4 of Standard No. 208, the Roadster meets all other Federal motor vehicle safety standards.

No comments were received on the application.

In spite of its previous exemptions, Panoz has accumulated more than $13,000,000 in net losses during the exemption periods, over half of that occurring in 1998 and 1999 when its latest extension was in effect. After NHTSA had granted the previous extension on April 6, 1998 (63 FR 16856), the agency issued its advanced airbag NPRM, in September 1998, and Panoz turned its limited resources towards an attempt to develop an advanced airbag system in compliance with the proposal, and anticipated that it would have to comply as of September 1, 2002. Fourteen months

later, in November 1999, NHTSA issued a supplemental NPRM under which compliance would be deferred until September 1, 2005 for small manufacturers such as Panoz. At this point, Panoz resumed its efforts to modify the Ford mechanical airbag system only to find that Ford had changed to an electronic system with its 1999 models. Panoz could not adopt the system without additional crash testing, and it now anticipates that it will be in compliance at the end of the two-year extension it has requested. Although this is the fourth time that Panoz has applied to NHTSA for an exemption from the automatic restraint requirements of Standard No. 208, the statute imposes no limit on the number of times that a manufacturer may apply, and a further exemption may be granted upon appropriate findings of hardship and good faith efforts to comply.

We have concurred before with Panoz's arguments that an exemption would be in the public interest and consistent with the objectives of motor vehicle safety. The Roadster is built in the United States and 100% of its components are bought from Ford and from other domestic suppliers. With the exception of Standard No. 208, the Roadster is said to meet all other applicable Federal motor vehicle safety standards.

In consideration of the foregoing, we hereby find that Panoz has met its burden of persuasion that, to require compliance with S4.1.4. of Federal Motor Vehicle Safety Standard No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further find that a temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, Panoz Auto Development Company is hereby granted NHTSA Temporary Exemption No. EX2001–1 from S4.1.4 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 Occupant Crash Protection. This exemption applies only to the Panoz Roadster and will expire on January 1, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on January 11, 2001.

Rosalyn G. Millman,

Deputy Administrator.

[FR Doc. 01–1691 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–8681]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Review: Fatality Reduction by Safety Belts; Evaluation Report

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

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating its existing Safety Standard 208, Occupant Crash Protection. The report's title is Fatality Reduction by Safety Belts for Front-Seat Occupants of Cars and Light Trucks: Updated and Expanded Estimates Based on 1986–99 FARS Data.

DATES: Comments must be received no later than May 22, 2001.

ADDRESSES:

Report: You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Publications Ordering and Distribution Services (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. A summary of the report is available on the Internet for viewing on line at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/809199.html.* The full report is available on the Internet in PDF format at *www.nhtsa.dot.gov/cars/rules/regrev/evaluate/pdf/809199.pdf.*

Comments: All comments should refer to the Docket number of this notice (NHTSA–2001–8681). You may submit your comments in writing to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You may also submit your comments electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to obtain instructions for filing the document electronically.

You may call Docket Management at 202–366–9324 and visit the Docket from 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Charles J. Kahane, Chief, Evaluation Division, NPP–22, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2560. FAX: 202–366–2559. E-mail: *ckahane@nhtsa.dot.gov.*

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: Visit the NHTSA web site at *http://www.nhtsa.dot.gov* and click ''Regulations & Standards'' underneath ''Car Safety'' on the home page; then click ''Regulatory Evaluation'' on the ''Regulations & Standards'' page.

SUPPLEMENTARY INFORMATION: NHTSA estimated in 1984 that manual 3-point safety belts reduce the fatality risk of front-seat occupants of passenger cars by 45 percent relative to the unrestrained occupant. This critically important safety technology should be re-evaluated periodically to see if effectiveness estimates are still current and accurate. However, after 1985, the prime analysis technique for Fatality Analysis Reporting System (FARS) data, double-pair comparison, began producing inflated, unreliable results. The technical report develops an empirical tool to adjust double-pair comparison analyses of 1986–99 FARS data. It validates the adjustments by comparing the belt use of fatally injured people in certain types of crashes to belt use observed on the road in State and national surveys. These methods reconfirm the agency's earlier estimates of fatality reduction by manual 3-point belts: 45 percent in passenger cars and 60 percent in light trucks. Furthermore, they open the abundant 1986–99 FARS data to additional analyses, permitting point-estimation of belt effectiveness by crash type, occupant age and gender, belt type, vehicle type, etc.

How Can I Influence NHTSA's Thinking on This Evaluation?

NHTSA welcomes public review of the technical report and invites reviewers to submit comments about the data and the statistical methods used in the analyses. NHTSA will submit to the Docket a response to the comments and, if appropriate, additional analyses that supplement or revise the technical report.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2001–8681) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System website at *http://dms.dot.gov* and click on ''Help & Information'' or ''Help/Info'' to obtain instructions.

We also request, but do not require you to send a copy to Charles J. Kahane, Chief, Evaluation Division, NPP–22, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590 (alternatively, FAX to 202–366–2559 or e-mail to *ckahane@nhtsa.dot.gov*). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW, Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590, or submit them electronically.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW, Washington, DC from 10:00 a.m. to 5:00 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

a. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

b. On that page, click on ''search.''

c. On the next page ((*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this Notice (6545). Click on ''search.''

d. On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 01–1702 Filed 1–19–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Department of the Treasury (''Treasury'').

ACTION: Notice of Department of the Treasury Financial Assistance Subject to Title IX of the Education Amendments of 1972, as amended.

SUMMARY: In accordance with Subpart F of the final common rule for the enforcement of Title IX of the Education Amendments of 1972, as amended (''Title IX''), this notice lists federal financial assistance administered by the U.S. Department of the Treasury that is covered by Title IX. Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F of the Title IX common rule requires each federal agency that awards federal financial assistance to publish in the **Federal Register** a notice of the federal financial assistance covered by the Title IX regulations within sixty (60) days after the effective date of the final common rule. The final common rule for the enforcement of Title IX was published in the **Federal Register** by twenty-one (21) federal agencies, including Treasury, on August 30, 2000 (65 FR 52858–52895). Treasury's portion of the final common rule will be codified at 31 CFR Part 28.

SUPPLEMENTARY INFORMATION: Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). Title IX and the Title IX common rule prohibit discrimination on the basis of sex in the operation of, and the provision or denial of benefits by, education programs or activities conducted not only by educational institutions but by other entities as well, including, for example, law enforcement agencies, departments of corrections, and for profit and nonprofit organizations.

List of Federal Financial Assistance Administered by the Department of the Treasury to Which Title IX Applies

Note: All recipients of federal financial assistance from Treasury are subject to Title IX, but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any.

Failure to list a type of federal assistance below shall not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX.

1. Assistance provided by the Office of the Partnership in Education linking the various Treasury bureaus' educational and community outreach efforts, including: support activities for career academies and Adopt-A-School programs; identifying external and community resources in support of partnership objectives; Computers for Learning, the donation of surplus computer equipment, technology training and support to local schools; Professional Development Series, the workplace readiness training for high school internships; Achieves Initiative, to motivate students to attend and stay in

school and to provide financial skills training; and coordination of volunteer efforts involving technology, mentoring and tutoring support for partnership schools. (National and Community Service Act of 1990, 42 U.S.C. 12501; 104 Stat. 3127—Public Law 101–610; and Executive Order 12999 and Executive Order 12820.)

2. Assistance provided by the Federal Law Enforcement Training Center, the Customs Service and the Secret Service in the form of training for state, local, and Federal law enforcement officers. (Omnibus Consolidated Appropriations Act of 1997, 110 Stat. 3009—Public Law 104–208.)

3. Assistance provided by the Community Development Financial Institution Fund in the form of capital to institutions serving distressed communities and low-income individuals. (Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325.)

4. Assistance provided by the Community Adjustment and Investment Program in the form of financial resources for loans or loan guarantees to create or retain private sector jobs in U.S. communities with significant job losses due to changes in trade patterns as a result of the North America Free Trade Agreement. (The North American Free Trade Agreement Implementation Act, 107 Stat. 2057—Public Law 103–182.)

5. Assistance provided by the Customs Service in the form of sharing seized items with other Federal, state, and local law enforcement agencies. (The Department of Treasury Forfeiture Fund, 31 U.S.C. 9703(a)(1)(G).)

6. Assistance provided by the Customs Service in the form of funding for overtime work to state and local agencies assisting Customs in law enforcement activities. (The Department of Treasury Forfeiture Fund, 31 U.S.C. 9703(a)(1)(I).)

7. Assistance provided by the Internal Revenue Service under the Low-Income Taxpayer Clinic (LITC) Program in the form of matching grants for qualifying organizations that provide legal assistance to low-income taxpayers in controversies with the IRS and/or inform Limited English Proficient (LEP) individuals of their tax rights and responsibilities. (IRS Restructuring and Reform Act of 1998, Public Law 105–206.)

8. Assistance provided by the Internal Revenue Service in the form of grants to non-profit organizations that operate Tax Counseling for the Elderly (TCE) programs, which train volunteers to provide free tax help to individuals 60 years of age and over and reimburse volunteers for mileage and other expenses incurred as part of the program. (Section 163 of the Revenue Act of 1978, 92 Stat. 2810—Public law 95–600.)

9. Assistance provided by the Bureau of Alcohol, Tobacco, and Firearms in the form of youth crime prevention focused on gang resistance open to all elementary, middle or junior high schools (Violent Crime Reduction Act, Public Law 103–322, section 32401.)

In addition to the above, further information on Treasury federal financial assistance can be found by consulting the Catalog of Federal Domestic Assistance (CFDA) at *http://www.cfda.gov.* If using the Internet site, please select ''Search the Catalog,'' select ''Browse the Catalog—By Agency,'' and then click on ''The Department of Treasury.'' Catalog information is also available by calling, toll free, 1–800–699–8331 or by writing to: Federal Domestic Assistance Catalog Staff (MVS), General Services Administration, Reporters Building, Room 101, 300 7th Street, SW., Washington, DC 20407.

The following is a list of other federal financial assistance administered by Treasury as derived from the CFDA. For further information on any of these types of federal financial assistance, please consult the CFDA. Abbreviations following each type of federal financial assistance indicate which Treasury Department component administers the relevant federal financial assistance, and are as follows: IRS—Internal Revenue Service; DO—Departmental Offices; ATF—Bureau of Alcohol, Tobacco, and Firearms; USSS—United States Secret Service.

Taxpayer Service—(IRS)
Exchange of Federal Tax Information With State Tax Agencies—(IRS)
Bank Enterprise Award Program—(DO)
ATF Training Assistance—(ATF)
Secret Service Training Activities—(USSS)

Authority: 20 U.S.C. 1681–1688; 65 FR 52881, to be codified at 31 CFR Part 28.

Dated: January 11, 2001.

Lisa G. Ross,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 01–1596 Filed 1–19–01; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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 Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notice of Firearms Manufactured or Imported.

DATES: Written comments should be received on or before March 23, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Art Resnick, Chief, National Firearms Act Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8330.

SUPPLEMENTARY INFORMATION:

Title: Notice of Firearms Manufactured or Imported.

OMB Number: 1512–0025.

Form Number: ATF F 2 (5320.2).

Abstract: ATF F (5320.2) is used by a federally qualified firearms manufacturer or importer to report firearms manufactured or imported and to have these firearms registered in the National Firearms Registration and Transfer Record as proof of the lawful existence of the firearm.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 590.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 5,900.

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: January 11, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–1809 Filed 1–19–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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 Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Certification/Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before March 23, 2001 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Lynne Gittes, Alcohol, Labeling and Formulation Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8140.

SUPPLEMENTARY INFORMATION:

Title: Application for Certification/ Exemption of Label/Bottle Approval Under the Federal Alcohol Administration Act.

OMB Number: 1512–0092.

Form Number: ATF F 5100.31.

Abstract: ATF administers the Federal Alcohol Administration Act and its implementing regulations. The law and regulations provide, in part, standards and guidelines for the labeling of alcohol beverages. Under the law and regulations, U.S. bottlers and importers cannot bottle or import alcohol beverages without a certificate of label approval. To obtain approval, U.S. bottlers and importers must complete ATF F 5100.31.

Current Actions: ATF F 5100.31 has been revised. Minor changes were made to the front of the form. The wording of items 7, 16 and 17 were slightly modified for clarification purposes. The back of the form was completely changed. Following plain language guidelines, the instructions for completing the form and conditions of approval were reformatted. The conditions under which approved labels may be modified without submission of a new application for certificate of label approval were changed. The single-most significant revision of the form is the allowance to add, delete or change any nonmandatory label information without submission of a new application for certificate of label approval. There is an increase in burden hours due to an increase in respondents. The recordkeeping requirement for this information collection is 3 years.

Type of Review: Extension with changes.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 9,047.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 37,016.

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: January 11, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–1810 Filed 1–19–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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 Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Registration For Tax-Free Transactions Under 26 U.S.C. 4221 (Firearms and Ammunition).

DATES: Written comments should be received on or before March 23, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Rich Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For Registration For Tax-Free Transactions Under 26 U.S.C. 4221 (Firearms and Ammunition).

OMB Number: 1512–0508.

Form Number: ATF F 5300.28.

Recordkeeping Requirement ID Number: ATF REC 5300/28.

Abstract: The information requested on ATF F 5300.28 is necessary for ATF to determine if persons (applicants) should be granted the privilege of purchasing or selling firearms and ammunition tax-free. There is no record retention requirement for the applicant.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, State or local governments.

Estimated Number of Respondents: 125.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 375.

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: January 11, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–1811 Filed 1–19–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

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 Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Special Agent Medical Preplacement.

DATES: Written comments should be received on or before March 23, 2001 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joyce H. Keene, Recruitment and Hiring Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Special Agent Medical Preplacement.

Form Number: ATF F 2300.10.

Abstract: Medical standards are part of the qualification standards for positions in the Federal Government. In general, there must be a direct relationship between the medical standard or physical requirement and the actual duties of the position being filled. Failure to meet an established medical standard of physical requirement means that the individual is not qualified for the position. The information obtained from ATF F 2300.10 will be initially used to make a recommendation on either hiring or not hiring an applicant.

Current Actions: This is a new information collection.

Type of Review: New.

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 225.

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: January 11, 2001.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 01–1812 Filed 1–19–01; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday, February 9, 2001.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday, February 9, 2001 6 p.m. to 9:20 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9:20 p.m. on Friday, February 9, 2001.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: January 10, 2001.

John J. Mannion,

Director, Program Planning and Quality.

[FR Doc. 01–1560 Filed 1–19–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–1: OTS Nos. H–3697 and 14379]

BUCS Financial Corp., Owings Mills, Maryland; Approval of Conversion Application

Notice is hereby given that on January 12, 2001, the Director, Examination Policy, Office of Thrift Supervision, or

his designee, acting pursuant to delegated authority, approved the application of BUCS Federal Bank, Owings Mills, Maryland, convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: January 12, 2001.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 01–1577 Filed 1–19–01; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to VA System of Records—Voluntary Service Records—VA.

SUMMARY: The Privacy Act of 1974 requires that all agencies publish in the **Federal Register** notice of the existence of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Voluntary Service Records—VA'' (57VA125) as set forth in the **Federal Register** at 42 FR 6032 dated 02–01–77. The number of the system is changed from 57VA125 to 57VA10C2 to maintain consistency of numbering with the Office code for the VA Voluntary Service (VAVS). VA is amending the system by including a purpose, by adding a new routine use, and by revising the paragraphs for System Location and Policies and Practices for Storing, Retrieving, Retaining, and Disposing of Records in the System, including Storage, Retrievability and Safeguards. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than February 21, 2001. If no public comments are received, the new system will become effective February 21, 2001.

ADDRESSES: Written comments concerning the proposed new system of records may be submitted to the Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION: VAVS has been an integral part of the VA system since 1946 and operates the largest Volunteer Program in the Federal government supplementing staff and resources in all areas of patient care and support. Its mission is to provide a structured Volunteer Program under the management of VA compensated employees in cooperation with community resources to serve America's veterans and their families with dignity and compassion. VAVS volunteers assist veteran patients by augmenting staff in such settings as hospital wards, nursing homes, community-based volunteer programs, end-of-life care programs, foster care, and veterans outreach centers. VAVS volunteers and their organizations annually contribute millions of dollars in gifts, donations, and time. Volunteers are a priceless asset to these veterans and VA. Electronic and paper records are maintained in Voluntary Service to include master records of Regularly Scheduled (RS) Volunteers, documents of participation of Occasional Volunteers, signed ''Waiver of Claims to Remuneration Agreement,'' parental or guardian consent forms for student volunteers, etc. Voluntary Service administrative and general correspondence files will be maintained in accordance with Records Control Schedule (RCS) 10–1. Voluntary Service has determined as a matter of policy to record hours and visits of all volunteers each month. These paper and electronic records and information may be used for tracking the number of RS Volunteers, Occasional Volunteers, and student volunteers; to produce statistical and managerial reports on the number of hours and visits of all volunteers each month; and to present volunteers with appreciation awards for service. The processing of this data is accomplished by utilizing the Veterans Health Information Systems and Technology Architecture (VISTA).

Routine use 1 has been replaced by three routine use disclosure statements that more accurately reflect disclosing relevant information to agencies charged with enforcing the law conducting investigations. All of the routine use disclosure statements were renumbered. Two routine use disclosures have been added to assist in the administration of the VAVS program. Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672. If one of the volunteer drivers is in an accident while driving a Disabled American Veterans vehicle, and there is litigation concerning the accident, VA must be able to provide relevant information. This information may include what assignment the volunteer has and whether or not the volunteer was listed as having worked on the day or days in question. A similar situation would apply if any volunteer were injured while volunteering at VA. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. VA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. VA must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

The Austin Automation Center (AAC) is designated as the corporate database for this program. Data transmission between the AAC and VA health care facilities is accomplished using the Department's wide area network. All transmissions include header information that is used for validation purposes. In addition, consistency checks in the software are used to validate the transmission, and electronic acknowledgment messages are returned to the sending application. Strict control measures are enforced to ensure that access to, and disclosure from, all records are limited to Voluntary Service employees whose official duties warrant access to files. The automated electronic record system recognizes authorized users by keyboard entry of a series of unique passwords. Employees are required to sign a user access agreement acknowledging their knowledge of

confidentiality requirements, and all employees receive annual training on information security. Working spaces and record storage areas in Voluntary Service are locked during non-business hours.

The notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (61 FR 6428), February 20, 1996.

Approved: January 5, 2001.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

57VA10C2

SYSTEM NAME:

Voluntary Service Records—VA.

SYSTEM LOCATION:

Paper and electronic records are maintained at each of the VA health care facilities. Only electronic records are maintained at the Austin Automation Center (AAC), Austin, Texas. Active records are retained at the facility where the individual has volunteered to assist the administrative and professional personnel and at the AAC. Basic information for all inactive records is retained at the facility where the volunteer worked.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All volunteers, regularly-scheduled and occasional, including non-affiliated and members of voluntary service organizations; and welfare, service, veterans, fraternal, religious, civic, industrial, labor, and social groups or clubs which voluntarily offer the services of their organizations and/or individuals to assist with the provision of care to patients, either directly or indirectly, through VA Voluntary Service under Title 38, United States Code, section 513.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative records containing personal information about the individual making application to become a volunteer in a VA health care facility, VA regional office, or VA cemetery. These minimum records include the volunteer's name, address, social security number, date of birth, telephone number, next-of-kin information, assignments worked, hours and years of service and last award received. Information relating to the individual membership in service organizations, qualifications, restrictions and preferences of duty and availability to schedule time of service. Medical and training records pertaining to the volunteer's service will also be maintained for all active volunteers at the facility where the volunteer works.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, section 513.

PURPOSE(S):

The records and information are used for tracking the number of Regularly Scheduled (RS) Volunteers, Occasional Volunteers, and student volunteers; to produce statistical and managerial reports on the number of hours and visits of all volunteers each month; and to present volunteers with certificates of appreciation for service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Any information in this system, except the name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

2. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto, in response to its official request.

3. The name and address of a veteran, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

4. Volunteer records may be used to confirm volunteer service, duty schedule, and assignments to service organizations, Bureau of Unemployment, insurance firms, office of personnel of the individual's full-time employment; to assist in the development of VA history of the volunteer and his/her assignments; and to confirm voluntary hours for on-the-job accidents, and for recognition awards.

5. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

6. Disclosure may be made to the National Archives and Records Service, General Services Administration, in records management inspections conducted under authority of Title 44 United States Code.

7. Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

8. Relevant information may be disclosed to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement. VA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes of all active volunteers are maintained at the AAC in Austin, Texas. The AAC only maintains data on active volunteers. Paper documents for all active volunteers are maintained at the individual VA facilities where the volunteer has donated time. Computer files containing such basic information as the volunteer's name, address, social security number, date of birth, telephone number, next-of-kin information, assignments worked, hours and years of service and last award received are retained for all volunteers, either active or inactive, at the VA

facility where the individual currently volunteers or has volunteered.

RETRIEVABILITY:

All volunteer records are retrieved by name, social security number (SSN) or pseudo SSN.

SAFEGUARDS:

Physical Security:

1. Access to VA working space areas and the AAC is restricted to VA employees on a ''need to know'' basis. Generally, VA file areas and computer rooms are locked after normal duty hours and are protected from outside access by the Federal Protective Service.

2. Strict control measures are enforced to ensure that access to and disclosure from all records including electronic files stored in the Volunteer Management System in VistA are limited to VAVS employees whose official duties warrant access to those files. The system recognizes authorized employees by a series of individually unique passwords/codes and the employees are limited to only that information in the file which is needed in the performance of their official duties.

3. Any sensitive information that may be downloaded or printed to hard copy format is provided the same level of security as the electronic records. All paper documents and informal notations containing sensitive data are shredded prior to disposal.

4. All new VAVS employees receive initial information security training, and refresher training is provided to all employees on an annual basis.

5. Access to the AAC is generally restricted to Center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the computer may be accessed by authorized VA employees at remote locations including VA health care facilities, Information Systems Centers, VA Central Office, and Veterans Integrated Service Networks. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

RETENTION AND DISPOSAL:

The paper and electronic records will be maintained and disposed of in accordance with the records disposition authority approved by the National Archives and Records Administration (NARA).

SYSTEM MANAGER(S) AND ADDRESSE(S):

Official responsible for policies and procedures: Director, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Official maintaining the system: National Automated Information Systems Coordinator, VA Medical Center, 2907 Pleasant Valley Blvd., Altoona, Pennsylvania 16602–4377.

NOTIFICATION PROCEDURE:

Individuals seeking information concerning the existence and content of their service records must submit a written request or apply in person to the VA health care facility where their voluntary service was accomplished. All inquiries must reasonably identify, to the VA facility, the portion of the volunteer's service record they want information about and the approximate dates of service, in order to receive that information. Inquiries should include the volunteer's name, social security number or pseudo SSN, organization represented, date of birth, and last address while serving as a volunteer to VA.

RECORDS ACCESS PROCEDURES:

Volunteers, dependents, survivors or duly authorized representatives seeking information regarding access to and contesting of VAVS records may contact the Voluntary Service office at the VA health care facility where the individual was a volunteer worker.

CONTESTING RECORD PROCEDURES:

(*See* Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records may be provided by the volunteer, the family of youth volunteers, civic and service organizations, and the VA health care facility.

[FR Doc. 01–1561 Filed 1–19–01; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
January 22, 2001

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Programs for Consumer Products; Test Procedures for Central Air Conditioners and Heat Pumps; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–97–440]

RIN 1904–AA46

Energy Conservation Program for Consumer Products: Test Procedures for Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule and public hearing.

SUMMARY: The Department of Energy (DOE) is proposing changes to its regulations on test procedures for central air conditioners and heat pumps. Today's revision of the test procedure is not expected to alter the minimum energy conservation standards currently in effect. The revised test procedure is up-to-date, more complete and better organized than the current version. It should yield more accurate measurements of the energy efficiency of central air conditioners and heat pumps.

DATES: Comments must be received on or before March 23, 2001. DOE is requesting a signed original, a computer disk (WordPerfect 8) and 10 copies of the written comments. The Department will also accept e-mailed comments but you must send a signed original. Oral views, data, and arguments may be presented at the public workshop (hearing) in Washington, DC, beginning at 9 a.m. on February 7, 2001.

The Department must receive requests to speak at the workshop and a copy of your statements no later than 4 p.m., January 9, 2001, and we request that you provide a computer diskette (WordPerfect 8) of each statement at that time. The DOE panel will read the statements in advance of the hearing and requests that speakers limit oral presentations to a summary. Attendees will have an opportunity to ask questions.

ADDRESSES: Please submit written comments, and requests to speak at the public hearing to: Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Test Procedures for Central Air Conditioners Including Heat Pumps, Docket No. EE-RM–97–440, EE–41, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. You may send email to: *brenda.edwards-jones@ee.doe.gov.* The hearing will be at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW., Washington, DC. You can find more information concerning public participation in this rulemaking proceeding in section VI, ''Public Comment,'' of this notice.

You may read copies of the transcript of the public hearing and public comments at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Michael G. Raymond, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Mail Station EE–41, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9611

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9526

SUPPLEMENTARY INFORMATION: The proposed rule incorporates, by reference, seven test procedures published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), as follows:

- Standard 23–1993, ''Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units.''
- Standard 37–1988, ''Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment.''
- Standard 41.1–1986 (Reaffirmed 1991), ''Standard Method for Temperature Measurement.''
- Standard 41.2–1987 (Reaffirmed 1992), ''Standard Method for Laboratory Airflow Measurement.''
- Standard 41.6–1994, ''Standard Method for Measurement of Moist Air Properties.''
- Standard 41.9–1988, ''A Standard Calorimeter Test Method for Flow Measurement of a Volatile Refrigerant.''
- Standard 116–1995, ''Methods of Testing for Rating for Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps.''

One test procedure of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers/Air Moving and Conditioning Association, Inc. (ASHRAE/AMCA) is incorporated by reference:

- Standard 51–1999, ''Laboratory Methods of Testing Fans for Rating.''

One test procedure of the Air-Conditioning and Refrigeration Institute (ARI) is incorporated by reference:

- Standard 210/240–1994, ''Unitary Air-Conditioning and Air-Source Heat Pump Equipment.''

You can view copies of these standards at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can also obtain copies of the ASHRAE, ASHRAE/AMCA and ARI Standards from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, http://www.ashrae.org; and the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203, http://www.ari.org, respectively.

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V. Procedural Requirements
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VI. Public Comment Procedures
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I. Summary of Proposed Rule

Today's proposed rule concerns the testing aspect for central air-conditioners and central air-conditioning heat pumps. The Department develops these procedures for manufacturers to test products to measure energy efficiency, energy use, or estimated annual operating cost of a product. It will interest manufacturers, but consumers of air conditioners will see no changes due to this revision, which brings the test procedure up-to-date, and makes it more complete and better organized. Nearly all the technical content is preserved and the use of U.S. customary (i.e., inch-pound) units is maintained. Air conditioners and heat pumps that presently meet the NAECA energy conservation standards will still meet these standards when rated using the revised test procedure.

II. Introduction

A. Authority

The Energy Policy and Conservation Act requires the Department of Energy to establish the Energy Conservation Program for Consumer Products. This program sets test procedures, energy consumption and efficiency labeling, and energy conservation standards for many household, consumer products.[1] The Act requires DOE to determine to what extent a proposed test procedure would change the energy efficiency or energy use of a product from the current test procedure. If we determine that a new test procedure would change the efficiency or use of a covered product, we will amend the standard. To determine the new energy conservation standard, we measure the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average efficiency of these representative samples, tested using the amended test procedure, constitutes the amended standard. EPCA, Section 323(e)(2).

B. Background

1. Short and Long-Term Plans

This proposed DOE test procedure is the first step of a planned two-step revision process. The immediate goal is to promulgate a revised test procedure that is up-to-date, more complete and better organized. Nearly all the technical content is preserved and the use of U.S. customary (*i.e.,* inch-pound) units is maintained. One especially important goal of this first step is to have air conditioners and heat pumps that presently meet the NAECA energy conservation standards to still meet these standards when rated using the revised test procedure.

The second step in the planned revision process is to convert the DOE test procedure to using Systeme Internationale (SI) units while maximizing compatibility with pertinent standards of the International Organization for Standardization (ISO). The goal of this second step is a DOE metric test procedure which will also meet the requirements specified by ISO for determining capacities, EER(s) for a ''moderate'' climate, and COP's. For example, DOE plans to directly reference selected ISO indoor and outdoor test conditions. However, the DOE test procedure will impose additional requirements, not found in the ISO test standards, that allow determination of the seasonal performance factors SEER and HSPF. Presently, the pertinent ISO standards are either under revision or are being newly developed so we can not yet fully determine the extent of compatibility between the DOE and ISO testing and rating procedures. DOE, via NIST personnel, is participating in the development of the ISO test standards in an effort to minimize the differences. A proposed DOE metric test procedure will be available for industry review several months after the revision of ISO standards (5151 and 13253 or, possibly a combined standard) is completed.

This two-step test procedure revision will not delay the concurrent revision of the NAECA energy conservation standards, nor will standards revision be delayed because of the planned conversion of the test procedure to SI units. Until a DOE metric test procedure has been promulgated, you will make predictions of seasonal performance using the I–P version of the DOE test procedure, *i.e.,* this revision. This revised test procedure modifies tests for certain configurations, but is not expected to impact the performance measurements. In the coming years, when a DOE metric test procedure is progressing through the rulemaking process, DOE and stakeholders will review the best time line for implementing the metric test procedure and instituting compatible NAECA energy conservation standards. As far as possible, the metric test procedure will retain the current energy efficiency descriptors, SEER and HSPF.

2. Background for Today's Proposed Rulemaking

The first DOE test procedure covering central air conditioners and heat pumps was published in the **Federal Register** on December 27, 1979, and became effective January 17, 1980. 44 FR 76700. The test procedure was modified once, in March 1988. 53 FR 8304 (March 14, 1988). Revisions made in 1988 included expanding coverage to variable-speed air conditioners and heat pumps, addressing split-type non-ducted units, and modifying the method used for crediting heat pumps that provide a demand defrost capability.

Five waivers to the DOE test procedure covering central air conditioners and heat pumps have been granted since the 1988 final rulemaking. Waivers have been granted to two different brands of non-defrost heat pumps, to two brands of combined heat pump-water heating appliances, and for a line of burner-assisted heat pumps. Non-defrost heat pumps do not contain a defrost controller and are designed to shut the compressor off under operating

[1] Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, the National Appliance Energy Conservation Act of 1987, Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486, Part B of Title III of Energy Policy and Conservation Act, as amended, is referred to in this proposed rule as ''EPCA'' or the ''Act.'' Part B of Title III is codified at 42 U.S.C. 6291–6309.

conditions where frost accumulation on the outdoor coil is likely. Combined appliances use an extra condensing coil to permit the unit to provide domestic water heating in addition to space conditioning. Burner-assisted heat pumps use a gas-fired burner in the outdoor coil while using electricity to power the refrigerant compressor.

In revising this test procedure, we considered whether actions could be taken to eliminate the continued need for any of the granted waivers. Today's proposed rule covers testing and calculation of HSPF for non-defrost, all-electric heat pumps, eliminating the first two of the five waivers discussed in the preceding paragraph. As the market for dual fuel heat pumps, including burner assisted heat pumps, and combined heat pump-water heating appliances grows, we will pursue the development of separate test procedures for these devices, which will eliminate the remaining three waivers.

We completed the first draft of this revised test procedure for central air conditioners and heat pumps in June 1996. The draft test procedure addressed equipment features presently not covered and improved upon the completeness and readability of the document. The June 1996 draft test procedure was distributed to members of the HVAC industry and academia for comment on the proposed changes.

Several parties provided comments on the June 1996 draft test procedures. We determined that more input on several issues would be beneficial, and DOE held a workshop on September 25, 1997. The workshop focused on five areas of concern. The first area was the identification of commercially-available equipment that is not adequately addressed in the existing test procedure. Examples include non-defrost heat pumps, heat pumps that incorporate a heat comfort controller, multi-split non-ducted heat pumps, two-capacity heat pumps that are sized to meet the space cooling load while operating at low capacity, small duct systems, and single-speed heat pumps having a variable-speed indoor fan that is modulated based on outdoor temperature. The second issue was the appropriate way to conduct steady-state and cyclic testing on units having a variable-speed, constant-air-volume-rate indoor blower. The third area of concern dealt with appropriate adjustments in order to credit a demand defrost capability and to account for the effect of barometric pressure. A group of items that pertained to specifics on lab testing procedures composed the fourth topic of discussion. Examples included how to best test packaged units having leakage, whether to limit manufacturer-specified special lab set-up requirements, recommended static pressure tap manifolding, and electrical energy measurement requirements. The fifth issue concerned the development of new defaults for the cyclic degradation coefficients, as an alternative to having to conduct tests to determine the coefficients.

A transcript of the discussions at the September 25 workshop is available for review in the DOE Freedom of Information Reading Room. The section below summarizes comments received throughout the revision process. During the workshop, several items were introduced but left unresolved. In many of these cases, ARI industry members indicated that they would offer more input and, where possible, a consensus response in the months following the workshop.

At the invitation of ARI, NIST participated in a meeting and teleconferences hosted by the ARI Unitary Small Equipment Engineering Committee in September and October of 1997 and February of 1998. For the meetings/teleconferences that followed the September 25, 1997 Workshop, discussions on DOE test procedure issues focused mainly on eleven issues, namely: (1) Small duct systems, (2) non-defrost systems, (3) multiple split heat pumps, (4) variable-speed, constant CFM blowers, (5) heat pumps that incorporate a heat comfort controller, (6) two capacity heat pumps that are sized to meet the design cooling load while operating at low speed, (7) definition for a demand defrost system, (8) effects of barometric pressure, (9) testing of packaged systems with internal leaks, (10) special laboratory setups, and (11) new default values for the cyclic degradation coefficients, C_D (the measure of performance degradation from cycling losses). Written comments were received dated 24 November 1997 from ARI (ARI, No. 6) that addressed these particular areas. ARI formed a task group to provide additional input on three items: #4, #6, and #9. ARI also hoped to provide data and a strawman approach for addressing item #11. These last four items were discussed during a February 1998 teleconference but ARI provided no consensus by the end of February, the cutoff date imposed by DOE.

The 24 November 1997 written comments from ARI are included among the overall comment summary provided below. With regard to unresolved issues associated with ARI items #4, #6, and #9, we implemented changes based on the information gathered to date. Today's rulemaking proposes no changes for the C_D defaults that may be used instead of conducting extra tests. DOE is willing to investigate and consider new C_D defaults based on the hardware features of the air conditioner or heat pump. ARI and its members have thus far provided no test data nor made any recommendations concerning the hardware features (*e.g.,* type of expansion device, with or without a time delay relay on the indoor fan, type of compressor, off-cycle power consumption, refrigerant charge quantity, rated capacity, etc.) that should be included in a statistical analysis to identify the primary factors and the associated correlations.

A draft of this proposed test procedure was posted to the Office of Codes and Standards web site in October 1998. This document was revised during the summer of 1999 to comply with the President's Memorandum of June 1, 1998, ''Plain Language in Government Writing.'' Thereafter, some sections of the proposed test procedure were reorganized and amended in response to comments received during the DOE internal review process.

In the proposed central air conditioner and heat pump standards rule (65 FR 59590, October 5, 2000), the Department discussed issues associated with mandating thermostatic expansion valves, or TXVs, to help maintain equipment performance under improper charge or airflow. In the standards final rule, we decided not to adopt a TXV requirement, but considered pursuing modifications to this test procedure to encourage the use of TXVs. Such modifications will not be part of this rulemaking, but will be considered in a separate process. Related issues that may be discussed in the separate process include the alternate rating method for mixed systems. The alternate rating method is not a part of this revision, which concerns only appendix M to subpart B of 10 CFR part 430. The alternate rating method is discussed in 10 CFR § 430.24(m). In the last revision of this test procedure in 1988, the adoption of a standard rating procedure for untested combinations of split systems was proposed, but the Department decided not to include a standard rating procedure in the test procedure rule. Instead, the Department requested the National Bureau of Standards to develop a rating method available to any manufacturer to use in rating untested combinations. Manufacturers may use this method or any other after obtaining the Department's approval. It may again be time to discuss a standard mixed system rating method included in the test

procedure. These issues will be discussed in a workshop to be held in the spring of 2001.

III. Discussion of Comments

Following the September 1997 workshop, we received comments from the ARI Unitary Small Equipment Engineering Committee and individual ARI members, Proctor Engineering Group, and from the Florida Solar Energy Center. We grouped these comments into the following categories corresponding to sections of the test procedure: General, Definitions, Testing Conditions, and Testing Procedures. (ARI, No. 6, PEG, No. 3, FSEC, No. 7)

A. General

1. Non-ducted Split System Air Conditioners and Heat Pumps

Non-ducted units may use one or more indoor coils. When two or more indoor coils are used, they may operate in response to a single or multiple room thermostats. Standards of the International Organization for Standardization (ISO) differentiate non-ducted units as single or multiple room thermostat systems. We refer to equipment having one or more indoor coils all controlled by a single indoor thermostat as mini-split systems. We refer to equipment that uses two or more indoor thermostats to regulate the operation of two or more indoor coils as multi-split systems.

The current DOE test procedure does not differentiate between mini-split and multi-split systems. Both are tested and seasonal calculations are based on all indoor coils operating simultaneously. The zoning capability of multi-split units, though not operating some indoor coils, is not credited.

As part of its 1992 waiver petition, EnviroMaster International (EMI) sought ''to test its three and four zone MC/MH series systems in the manner prescribed in the DOE test for two zone systems.'' 57 FR 53736 (November 12, 1992). The modification noted in the Decision and Order was to change the wording of Section 3.1.7 to the following:

''Subsystems of multizone split-type ductless systems shall be tested as a single system. The system energy efficiency shall be based on the sum of the measured capacities of all of the zones in the system divided by the total input power used by the subsystems compressors, outdoor fans, indoor air handlers, and any additional power used by the system.''

ARI commented on this issue: ''Our members do not believe any change is necessary to the test procedures to address multiple split heat pumps. We are unaware of any unfair treatment of this product in the industry by the current test methods.'' (ARI, No. 6 at 1).

We propose no changes in today's test procedure. The option of testing each zone separately is possible. Such extra testing should provide a more complete description of the unit's capabilities. However, the benefits would have to be weighed against the considerable increase in the testing burden. The Department recommends tabling this issue until a multi-split manufacturer deems that a different and, most likely, more burdensome test approach is needed.

2. Small-duct, High-velocity Systems

Unico originally requested that DOE add a new class (or subclass) of central air conditioners and heat pumps that covered small-duct, high-velocity (SDHV) systems. Unico recommended changes to the test procedure that were coupled with DOE issuing separate NAECA standards for SDHV systems. The main test procedure changes were to impose higher minimum external static pressures and lower maximum air volume rates requirements on SDHV systems. Unico also provided a proposed definition for SDHV systems. (Unico, No. 5 at 2).

Unico noted how small duct systems differ from more conventional systems: external static is typically 1.5 inches of water, air volume rate is usually one-half of a conventional system, duct outlets into the room are typically two inches in diameter, and air velocity entering the room is in the 800 to 2000 feet per minute range. ''We feel this product is different enough that it * * * should be considered for a different class. We have different classes for room air conditioners; we have different classes for packaged terminal units and ductless systems versus ducted systems.'' (Unico, No. 2HH at 42). ARI commented: ''ARI believes that no changes to the existing test procedure are necessary for these products. They are currently tested and rated in accordance with the existing procedure. Furthermore, ARI does not believe a different product class or category should be created for small-duct systems, since that would allow for a potentially separate efficiency standard. They should be held to the same minimum efficiency standards as conventional systems. There is concern that a separate product class could open a loophole in the regulations. Other products might be specifically designed to meet the criteria of the new class, with the only intention being that they would be subjected to a less stringent efficiency standard, while still used in applications for typical equipment.'' (ARI, No. 6 at 1).

Unico later submitted an alternative proposal to DOE. In its alternative proposal, Unico plans to exercise the option of testing its line of SDHV units as coil-only units. In the Unico product line, the blower assembly is sold separately from the indoor coil assembly. The only change in the test procedure needed to implement this alternative approach is to relax the maximum pressure drop allowed when testing coil-only units. Presently, the test procedure states that the pressure drop across the indoor coil assembly must not exceed 0.30 inches of water. Unico requested that the limit be increased, preferably to 0.50 inches of water.

Today's proposed test procedure sets a higher pressure drop limit of 0.5 inches of water when testing coil-only units that meet the definition of a small-duct, high-velocity system. The proposed definition is given in section 1.46. We welcome comments on this action. Possible points for consideration include whether the action is acceptable as proposed or if incorporated in combination with a different default fan power and heat adjustment.

3. Non-defrost (Limited-range) Heat Pumps

We granted the first of two waivers for non-defrost heat pumps to Airlex in 1988. 53 FR 52216 (December 27, 1988). The waiver called for testing at 47 °F and 62 °F in lieu of testing at 35 °F and 17 °F. HSPF was calculated. Airlex, to the knowledge of DOE, has since gone out of business. We granted the second waiver to EMI in November 1992. 57 FR 53736 (November 12, 1992). Unlike Airlex, EMI did not seek to report HSPF and so did not offer proposed modifications to the DOE test procedure. We required that EMI state in its printed materials on its non-defrost products that ''no HSPF value has been measured since the heat pump cannot be operated at temperatures below 35 °F.''

At this time, non-defrost heat pumps appear to be limited to non-ducted, multi-zone, multi-split heat pumps having multiple refrigeration systems where one refrigeration system may be heating while another is cooling. In such systems, having one refrigeration system conduct a defrost while the other refrigeration system(s) is cooling is apparently quite difficult (see below EMI comment). No opposition was voiced at the workshop to a DOE proposal to cover non-defrost heat pumps in the test procedure. We also

received the following comments at the workshop:

In response to the question on why EMI can not make its non-ducted, multi-refrigeration system, multi-split heat pumps defrost, EMI stated ''we have put preliminary designs together, but we've never been able to successfully control the defrost cycle while operating all the circuits.'' (EMI, No. 2HH at 23). Trane spoke against the option of creating a new class and a new NAECA HSPF energy standard for non-defrost heat pumps. (Trane, No. 2HH at 24). An ARI representative said that presently a multi-zone multi-split would be tested with all refrigeration systems operating in the same mode. (ARI, No. 2HH at 23). In written comments received following the workshop, ARI stated: ''For the same rationale as with small duct systems, ARI does not believe a separate product class or category is needed for non-defrost heat pumps. We also recommend no change in the current test procedure to accommodate non-defrost systems. As discussed above, they should be held to the same minimum efficiency standards as conventional systems.'' (ARI, No. 6 at 1).

Since the workshop, DOE received information on non-ducted, multi-refrigeration system, multi-split heat pumps made by two manufacturers other than EMI. Both of these competing multi-split products provide a defrost capability. The key differentiating feature is that these units do not provide the option of simultaneous heating and cooling like the EMI product. EMI apparently values this simultaneous cooling/heating capability more than a defrost capability while these other two manufacturers do without the simultaneous mode feature in return for being able to defrost. To date, we have found no product that provides both the simultaneous heating/cooling feature and a reverse defrost cycle capability.

From a test procedure standpoint, several options are available. One option, in line with ARI's comment, is to make no applicable changes to the test procedure and allow the existing EMI (and Airlex) waivers to remain. This option defers the issue until we receive another waiver request for a non-defrost heat pump. A second option is to make additions to the test procedure so that the HSPF of any type of non-defrost heat pump could be evaluated. A third option is to exclude heat pumps that are designed to simultaneously heat and cool ''whether they can defrost or not'' from the scope of the test procedure. The rationale for exclusion would be that such units generally compete with commercial applications where packaged terminal heat pumps and air conditioners are used and so should be tested and rated in a manner comparable to the approach used for packaged terminal equipment (*i.e.,* heating performance descriptor becomes COP at 47 °F and the equipment has no HSPF rating). For this third option, the test procedure could either be changed to cover all other non-defrost heat pumps (even though DOE knows of only the EMI simultaneously heat and cool, non-defrost heat pump) or no changes could be made, again deferring until we receive another waiver petition.

DOE requests comment on the above three and any other options for handling non-defrost heat pumps. To provide an understanding of the test procedure changes required to cover non-defrost heat pumps, we include in today's proposed test procedure (see Sections 3.6.1.1 and 4.2.1.1) the steps required to test and rate most conceivable types of single-speed, non-defrost heat pumps.

4. Heat Pumps That Incorporate a Heat Comfort Controller

Heat comfort controllers modulate the operation of the resistive elements of a heat pump to minimize temperature swings of the heated supply air when operating below the heat pump's balance point. Frequently, they seek to maintain a minimum delivery temperature when operating above the balance point. This latter application can cause the system to use more electrical energy than the heat pump alone would use to meet the building load.

At the 25 September 1997 DOE workshop, the issue was discussed at some length. The workshop members noted that the item can be both an OEM product that is an integral part of the as-shipped heat pump or it can be a field added accessory that is provided by the heat pump manufacturer or, more commonly, by a third party supplier. Also, assuming that the test procedure was modified to cover heat pumps with a heat comfort controller, no workshop invitee spoke in favor of new and separate NAECA standards for such products. The following points were also made at the workshop:

ARI stated if the manufacturer incorporates a heat comfort controller as an OEM feature, it should be covered by the test procedure. (ARI, No. 2HH at 31). Trane stated if the test procedure is modified to cover heat comfort controllers, the rating should be based on operating the controller at its maximum delivery temperature. (Trane, No. 2HH at 60). Proctor Engineering commented: ''Units designed to operate with strip heat above the balance temperature should not receive any special consideration in the test process or the [NAECA] Standard. Allowing special consideration will open the door to lower efficiencies in the field where installation errors already result in excessive strip heat use.'' (PEG, No. 3 at 3). ARI commented: ''We request DOE to develop a rating procedure for heat pumps that incorporate the use of electric resistance heat above the balance point. The procedure should be based on the highest indoor air delivery/supply temperature setting that the control system allows, so that the most conservative rating will be derived. Any heat pump that uses this feature, and still meets the minimum HSPF standard should be permitted. However, the existing ICC Model Energy Code prohibits such systems, because there is no rating method for them.'' (ARI, No. 6 at 2).

Today's proposed test procedure covers heat comfort controllers as applied to most types of single-speed heat pumps. With the heat comfort controller disabled, conduct all the same heating mode tests. Following the normally conducted heating mode test at 47 °F outdoor temperature, conduct an extra abbreviated test with the controller enabled to determine the air delivery temperature when the controller is set to its maximum setting (see Section 3.1.9). We describe proposed steps for calculating the HSPF of a single-speed heat pump having a heat comfort controller in Section 4.2.1.2.

5. Other Commercially-available Equipment that Should Be Covered in the Test Procedure

One focus of the 25 September 1997 DOE workshop was to identify commercially-available equipment that is not covered by the DOE test procedure. For the majority of equipment discussed at the workshop, we provide separate discussions elsewhere in this summary. Equipment types that were discussed and thought not to be a commercial product included: (1) Triple-capacity heat pumps and (2) units that use a two-capacity (two-stage) compressor and a variable-speed indoor fan that is modulated at each fixed stage of compressor operation.

B. Definitions

1. Revise Definition 1.20 ''Demand-defrost Control System''

ARI commented: ''We recommend that DOE expand the current ARI Standard 210/240 definition of a demand defrost system to include sampling intervals of a minimum of 10 minutes and not to have the definition pertain to time adaptive systems.'' (ARI, No. 6 at 2)

DOE's goal is to improve upon the existing definition provided in ARI Standard 210/240–94, Section A1.11, and in particular, to stop allowance of

the (maximum) 3 percent HSPF credit to units that truly do not offer a demand defrost capability. We provide a proposed definition for a ''demand-defrost control system'' that seeks to be consistent with ARI's comment as Definition 1.20.

C. Testing Conditions

1. Section 2.2.4. Wet-bulb Temperature Requirements for Air Entering the Indoor and Outdoor Coils

ARI commented: ''In order to provide better repeatability when testing packaged systems, which may be susceptible to internal air leakage, ARI believes it may be necessary to specify an outdoor dew point temperature when units are located in the outdoor chamber (ambient). A task group has been formed to investigate this issue and we will provide our recommendations to DOE as soon as they are available.'' (ARI, No. 6 at 2).

DOE's understanding of the impact of a leak that could result in optimistic results is as follows:

(1) Leak of outdoor air to a location upstream of the indoor coil but downstream of the test facility inlet wet bulb temperature (dew point, relative humidity) sensor. If the outdoor dew point is lower than the indoor dew point, the measured latent capacity will be higher than the true latent capacity, while the measured sensible capacity will be lower than the actual sensible capacity. The effect on total capacity will depend on dry bulb temperature of the outdoor air (82 °F or 95 °F) and the depression of the outdoor dew point relative to the indoor dew point.

(2) Leak of outdoor air to a location downstream of the indoor coil. Results are the same as (1) except that the depression of the outdoor dew point would have to be greater to overcome the negative effect on sensible capacity. The measured air volume rate on the indoor side would be higher than the actual rate at the coil and would thus increase the perceived sensible and latent capacity.

DOE's understanding of the other factors that are related to this issue are as follows. First, psychometric rooms have difficulty achieving and maintaining outdoor wet bulb temperatures in the mid 70's °F and higher during the A and B Tests. If the internal leakage is significant, obtaining a 6 percent energy balance would be difficult to achieve. Although potentially frustrating for a third party tester, the lack of an energy balance should provide impetus for the manufacturer to reduce the leakage. You can avoid the difficulty in maintaining the outdoor wet bulb temperature during the C and D dry coil tests by meeting the requirements of achieving a dry indoor coil, and by using the equation for determining sensible cooling capacity, as opposed to total cooling capacity.

In an effort to avoid potential cases where the leakage causes an optimistic result while still providing an energy balance of 6 percent or less, DOE recommends operating at an outdoor dew point temperature that is the same as the indoor dew point temperature during wet-coil tests where the unit does not reject condensate to the outdoor coil. DOE proposes a test tolerance of ±3.0 °F in the agreement of the average outdoor dew point temperature with the average indoor dew point temperature. In nominal terms, the target outdoor wet bulb temperatures will be 71.7 °F and 67.7 °F for the A and B Tests, respectively.

During heating mode tests, leaks could cause problems if the Outdoor Air Enthalpy Method is used to provide a secondary check of capacity. The proposed test procedure includes a recommendation for regulating the indoor side wet bulb temperature in an effort to minimize the difference between the indoor and outdoor-side dew point temperatures.

2. Section 2.2.5. Additional Refrigerant Charging Requirements

ARI stated: ''We believe the test procedure, as currently written, reasonably addresses the issue of special laboratory setups when conducting tests, as prescribed in manufacturer's installation instructions. Therefore, we do not recommend any change with respect to this issue.'' (ARI, No. 6 at 3).

Presently, any installation step is acceptable so long as it is specified in the manufacturer's installation instructions, including remarks that only apply if conducting laboratory testing. As discussed at the 25 September 1997 DOE workshop, the difficult issue is where to draw the line. Some special setups are justified and/or required when lab testing. DOE is only excluding special lab set-ups for refrigerant charging. With assistance from ARI and third-party laboratories, DOE will monitor test setup requirements to determine if manufacturers are specifying installation instructions inconsistent with the majority of lab installations or otherwise contrary to field practices. Furthermore, DOE is seeking assistance in establishing installation guidelines for items such as pre-washing of coils (*e.g.,* what cleaning agent to use, basic steps that specify the extent of the cleaning), run-in times on compressors, conditions where components (*e.g.,* crankcase heaters) are or are not electrically connected, exclusion of lab-only (or 25 feet only) lineset specifications, etc. These guidelines will be incorporated into future revisions of the test procedure to assist in obtaining consistency in the testing.

In today's proposed test procedure, the title of Section 2.2.5 changes from ''Exclusion of special setup requirements if stated in the manufacturer published installation manual'' to ''Additional refrigerant charging requirements.'' The section is included for two reasons. The first is to disallow the specification of two refrigerant charging criteria, one that applies for lab testing and one that applies for a field installation. The fact that a lab setting provides better quality control is not sufficient for permitting lab testing using a different charging criteria. The second reason for today's Section 2.2.5 is to avoid discrepancies and delays when third party testing is conducted. The third party testing facility should not have to consult with the manufacturer as to how the unit is to be charged. In the case of a certification failure, the issue of whether the testing facility charged the unit correctly should only be based on whether the manufacturer's charging criteria, as specified in the unit's installation instructions, were followed.

D. Testing Procedures

1. Section 3.1.4. Indoor Air Volume Rates for a Variable-Speed, Constant CFM Blower

ARI stated: ''ARI is aware of the need to consider more explicit procedures for testing units with variable speed blowers. Therefore, we have organized a task group to develop a prescribed test method for testing units with variable speed blowers, and we will pass our recommendations on to DOE as soon as they are available.'' (ARI, No. 6 at 1)

Today's proposed test procedure contains several changes from the existing test procedure to address testing of units having a variable-speed, constant CFM blower. For all tests, the exhaust fan of the air flow measuring apparatus is regulated to obtain an external static pressure that is as close to, while not being less than, the minimum external static pressure specified in the test procedure (see 3.1.4.1.1(b), 3.1.4.4.1, 3.1.4.4.2 and 3.1.4.4.3(b)). (The air flow measuring apparatus, by comparison, is not regulated to obtain the specified air volume rate, as is done when testing units having other than a constant-air-

volume-rate indoor fan.) For some units, one or more tests may have to be conducted at an external static pressure that is higher than the required minimum value because of instability problems encountered when trying to reduce the external static pressure to the specified minimum. In such cases, steps are outlined for correcting the test results if the difference between the as-tested and the specified minimum external static pressure is 0.03 inches of water or more. An example of the proposed correction method is provided in the last paragraph of Sections 3.3 and 3.7. For systems that operate at multiple air volume rates, the fan laws are used to approximate the target external static pressure for tests conducted at other than the air volume rate used during the A_2 and/or $H1_2$ test.

The proposed test procedure includes a check of the agreement between the lab-measured and manufacturer-certified air volume rates. Today's proposed test procedure calls for the two values to agree within 8 percent (see 3.1.4.1.1(b), 3.1.4.2, 3.1.4.4.2, and 3.1.4.4.3(b)). This percentage is proposed based on manufacturer's comments on the variability of the variable-speed motors relative to estimates of the impact on rated performance caused by an 8 percent deviation. Using the heat pump computer modeling program HPSIM, DOE finds that an 8 percent deviation in SCFM is expected to have a negligible impact on both capacity and EER at the B Test condition while still keeping the maximum impact on capacity at the A Test condition in the 2 percent range. DOE asks that manufacturers provide feedback on the proposed 8 percent tolerance as well as findings from lab testing and computer modeling on the impact on capacity and EER of airflow changes in the 5 to 10 percent range.

Cyclic tests on units having a constant CFM blower may be conducted with or without the indoor fan enabled. If the cyclic test is conducted with the blower disabled, steps for correcting for the power draw of the blower are specified (see 3.5 and 3.5.1).

2. Section 3.1.4.1. Cooling Air Volume Rate

This issue is of interest to the ISO working group that is revising its air conditioner and heat pump test standards. The adoption of a maximum air flow limit has thus far been opposed by the majority of the ISO working group member countries. The following comments were made at the DOE workshop. A Trane representative noted that the 37.5 SCFM per 1000 Btu/h (450 SCFM per ton) maximum air flow requirement is long-standing and is of value because it (1) sets a de facto maximum sensible heat ratio and (2) keeps the air flow in a range that avoids water being blown off the wetted evaporator. (Trane, No. 2HH at 193). A representative of York International suggested reevaluating the basis for the 37.5 SCFM per 1000 Btu/h maximum while considering both full load and part load capacity conditions. (York, No. 2HH at 197).

For today's proposed revision, no change is made in the maximum air volume rate limit. DOE sees such a limit as providing a hedge against promoting efficiency gain at the expense of compromised latent capacity, especially for coil-only units. The limit also helps in having the A and B Tests conducted with a fully wetted coil that, in turn, makes the capacity fluctuations less and the collection of 30 minutes of steady-state data more readily obtainable. DOE encourages and would participate in investigations on whether this limit should be other than its present value of 37.5 SCFM per 1000 Btu/h, or whether an alternative mechanism, such as a limit on sensible heat ratio, should be considered.

Discussion of this issue is timely because no such maximum air volume limit is presently included in ISO Standards 13253 and 5151 for ducted and non-ducted air conditioners and heat pumps. A U.S. proposal to adopt the metric-equivalent of the 37.5 SCFM per 1000 Btu/h limit was voted down by the ISO working group that is presently revising ISO Standards 5151 and 13253. The vast majority of other member countries on the working group perceive air volume rate as a design parameter that should not be impacted by a rating standard. The ISO standards provide capacity test conditions that correspond to a hot, dry climate where latent capacity is not a concern. ISO also provides capacity test conditions for a cool climate. ISO working group members from countries that will rate at this cool climate condition argue that high air volume rates are needed in order to assure that the air delivery temperature is not objectionably cool. Finally, with the exception of the U.S., most countries represented on the ISO working group are predominantly concerned with non-ducted products and calorimeter testing where indoor air volume rate is not typically measured.

The goal when converting the DOE test procedure to a metric format is to make it ISO compatible. Most ducted units sold in the U.S. today are rated at an air volume rate that is less than the 37.5 SCFM per 1000 Btu/h upper limit. This fact suggests that maximum efficiency is achieved at air volume rates lower than 37.5 SCFM per 1000 Btu/h. Thus, having a upper limit may not be important enough to warrant a deviation from ISO. Either way, now is the time to discuss this issue since the revision of the ISO Standard 13253 is still underway. However, it seems unlikely that ISO will adopt an upper limit on air volume rate.

3. Section 3.1.4.1.1. External Static Pressure

Proctor Engineering Group recommended the following changes to make the test specification conform better to measurements of installed systems. When testing units having an indoor fan, ''the minimum static pressure should be revised to:

- 0.50 inches of water column for all systems, or
- The maximum allowable external static pressure specified by the manufacturer, whichever is less.''

When rating fanless units, ''the default Btu/hr (watt draw of the indoor fan motor) should be revised to 2000 Btu/hr per 1000 cfm (586 Watts per 1000 cfm).'' For comparison, the external static pressure and fan heat/power defaults presently used in the existing DOE test procedure are 0.1, 0.15, and 0.2 inches of water, with the assigned value being a function of the unit's rated capacity. The presently referenced fan heat/power default adjustment is 1250 Btu/h per 1000 SCFM (365 Watts per 1000 SCFM). Proctor Engineering Group supported its proposed changes by providing results from field measurements on 28 new systems in new construction in Phoenix, Arizona. (PEG, No. 3 at 3).

The Florida Solar Energy Center sent a report on field monitoring work which indicated that ''the standard assumption of an external static pressure of 0.2 inches of water column (IWC) for the air handler fan was far lower than the typical values encountered in the field. The average we measured in 14 evaluated installations was 0.54 IWC (range was 0.27 to 0.91 IWC).'' The commenter goes on to state his strong belief that ''the ARI test condition should be modified to 0.5 IWC to better reflect the actual performance that will be achieved by the air conditioners operating under realistic conditions. Because of this change, the watt draw of the fan motor (and heat released into the supply air stream) should also be revised to reflect the increase in fan power from this change.'' (FSEC, No. 7 at 1)

Because of concern that such changes would impact the SEER and HSPF of units that have ratings at or near the

NAECA minimum standard levels, DOE does not plan to change the static pressure requirements in this revision of the test procedure. Instead, DOE will continue dialogue with the working group that is revising ISO Standard 13253. When the revision of ISO 13253 is completed, DOE will determine the suitability of incorporating part or all of this test procedure in the DOE metric test procedure. ISO Standard 13253 is presently under revision with the present draft containing the following requirements for the minimum external static requirements. (The Inch-Pound equivalent values are not part of the proposed 13253 table but are included here to aid the reader.)

Minimum static pressures

Standard capacity ratings (kW) [kBtu/h]	Minimum external static pressure (Pa) [inches of H_2O]
0 to <8 [0 to <27.3]	25 [0.10]
8 to <12 [27.3 to <41.0]	37 [0.15]
12 to <20 [41.0 to <68.3]	50 [0.20]
20 to <30 [68.3 to <102.4]	62 [0.25]
30 to <45 [102.4 to <153.6]	75 [0.30]
45 to <82 [153.6 to <279.9]	100 [0.40]
82 to <117 [279.9 to <399.3]	125 [0.50]
117 to <147 [399.3 to <501.7]	150 [0.60]
[Above 147 Above 501.7]	175 [0.70]

The numbers up to 20 kW are consistent with the values presently cited in the existing and in this proposed revision of the DOE test procedure.

As for fanless units, the draft revision of ISO 13253 contains a thermodynamically-based equation (volume flow rate x total pressure drop divided by fan static efficiency x fan motor efficiency) to estimate default fan heat/power adjustments. Total pressure drop is taken as the sum of the following:

(1) The lab-measured pressure drop across the indoor, fanless unit

(2) The applicable minimum external static pressure listed in the above table

(3) An estimate for the pressure drop across a typical blower cabinet (=50 Pa).

The minimum external static pressure requirements thus impact both the rating for fanless and blower coil units. For residential size equipment, ISO Standard 13253R uses the following empirical fits to determine the fan static (*SE*) and fan motor efficiencies (*MEr*).

$$SE = 0.1881 * Ln(P_e + P_c + 50) - 0.4700$$

$$MEr = 0.060 * Ln[Q * (P_e + P_c + 50) / SE] + 0.123$$

Where Q is the measured air volume rate of standard air (m^3/s), P_e is the minimum external static pressure (Pa), and P_c is the internal static pressure drop of the indoor coil cabinet assembly measured during the cooling capacity test (Pa).

Any proposal to raise the minimum external static pressure requirements and possibly tweak the ISO approach for estimating fan heat/power adjustments will first have to be agreed upon by the U.S. delegates on the ISO working group. If the proposal is endorsed by the U.S. delegation, then the delegation must submit the proposed change for the consideration of the full working group. NIST, as a member of the U.S. delegation, has raised the issue for discussion among the U.S. delegation. At this point, the U.S. delegation does not have plans for recommending changes to ISO 13253 in this area.

4. Sections 3.2.3 and 3.6.3. Testing a Two-capacity Compressor System

ARI stated: ''ARI agrees with DOE that the test procedure should be modified to accommodate more appropriate testing of multiple capacity heat pumps that are sized to meet the cooling load at fan speeds lower than the maximum. We have established a task group to investigate this issue, and will provide our recommendations to DOE as soon as they are available.'' (ARI, No. 6 at 2).

The proposed test procedure covers two-capacity heat pumps that are designed to operate exclusively at low capacity in meeting the space cooling load while using both low and high capacities when space heating. SEER of the unit is evaluated in the same way as specified for a single-speed air conditioner. HSPF is evaluated using the same algorithm as specified for a ''normal'' two-capacity heat pump except that the building loads for the heating temperature bins are based on the heat pump's heating capacity when tested at *low capacity* and 47 °F outdoor dry bulb temperature. Previously, the building loads were tied to the heat pump's heating capacity at 47 °F and *high* compressor capacity. The change will drive the balance point of the heat pump down. The issue on this particular subject is whether the heat pump must have a lockout feature to prevent cooling at high capacity or is it sufficient that the rating is applicable so long as the heat pump is sized to operate at low capacity at design cooling conditions? The advantages of the lockout would be to (better) assure that high compressor capacity would not be used when cooling and a particular unit would only have one unique NAECA-required SEER and HSPF rating. Without the lockout feature, the unit would have two SEER and HSPF ratings. A lockout feature is required in accordance with today's proposed test procedure but DOE welcomes further discussion on this issue.

5. Section 3.3. Capacity Adjustments for Barometric Effects

ARI commented: ''ARI is aware that barometric pressure can have an affect on test results. However, we believe DOE should allow ASHRAE to finish its analysis of this issue before making changes to the test procedure. The test procedure should be revised to reference ASHRAE Standard 37–1988, with the exception of the section that pertains to corrections made to capacities based on measured barometric pressures, since it is known this section contains an error and is being revised.'' (ARI, No. 6 at 2).

Today's proposed test procedure reflects the recommendation made by ARI.

6. Sections 3.5.3 and 3.8.1. Cyclic Degradation Coefficients

In the existing DOE test procedure, the default values provided for cooling and heating cyclic degradation coefficients, C^c_D and C^h_D, are both 0.25. On the cooling side, the two optional tests are conducted on the majority of units because the experimentally-determined C^c_D is lower than 0.25. NIST, DOE and ARI members have discussed developing new defaults. The goal is to obtain more representative defaults resulting in less C_D testing

while still crediting features that enhance cyclic performance. The manufacturers and ARI, as part of their certification program, have experimentally determined the C_D of many units. DOE believes the available data could be used to evaluate a set of new defaults that depend on the hardware components of the air conditioner or heat pump. The compiling of the data, however, is a formidable and thus far uncompleted task.

ARI originally commented: ''ARI endorses the concept of providing alternate degradation coefficients (C_D) for systems using specific components known to reduce the typical 0.25 default value. This could significantly reduce test burden by decreasing the need for the cumbersome cyclic test. ARI will continue to work with NIST on this effort, and provide whatever data our members authorize, to help determine appropriate alternatives.'' (ARI, No. 6 at 3). More recently, ARI members have reconsidered the merits of seeking new C_D defaults. A final decision from ARI is pending.

DOE encourages ARI to provide data and recommendations needed to begin the investigation into better C_D defaults. If better C_D defaults are identified, DOE will initiate steps to implement defaults that are lower than the existing values of 0.25. Such lower defaults could only positively impact the SEER and HSPF of a unit and so would not require adjustments to the existing NAECA energy conservation standards. Defaults that are higher than the existing 0.25 values, which could only negatively impact SEER and HSPF, would most likely become effective the same time as new NAECA energy conservation standards. We will not delay efforts to move today's proposed rulemaking into a final rulemaking by the pursuit of better C_D defaults. If we identify better defaults in sufficient time before the issue of the final rule, so we can obtain public comments on the proposed C_D values, then we will incorporate the better defaults into the final rulemaking. If better defaults are identified after the final rulemaking, DOE will initiate a new rulemaking process where changes and comments are limited to the issue of new C_D defaults.

E. Calculations of Seasonal Performance Descriptors

1. Sections 4.1.4 and 4.2.4. Variable-speed Bin Calculations

In the existing DOE air conditioner and heat pump test procedure, a quadratic fit is used to approximate the change in EER and COP as a function of the outdoor bin temperature. Prior to the 25 September 1997 DOE workshop, consideration had been given to using an alternative fit, a linear over linear rational function of the form $Y=(A_0+A_1 \cdot X)/(1+B_1 \cdot X)$. The rationale function was considered because it maintains a monotonic shape in all cases whereas a quadratic fit can have an inflection point between the points that it is fitting. For the purposes of interpolating the EER or COP of a variable-speed, all-electric heat pump or air conditioner, both fits are expected to give comparable results because the points being fitted have historically been close to linear. For the one variable-speed heat pump considered by NIST, for example, the two fits resulted in SEER and HSPF changes of 0.06% and 0.14%, respectively.

At the 25 September 1997 DOE workshop, the issue was discussed. Trane spoke against adopting the rational function on the basis that no practical problems had arisen with using the quadratic fit over the approximately 15 years that it has been used. (Trane, No. 2HH at 149–150).

Today's proposed test procedure maintains the use of the quadratic fit.

IV. Summary of Proposed Modifications to the DOE Air Conditioner and Heat Pump Test Procedure

In addition to the modifications cited in Section III, the proposed test procedure also incorporates the following changes.

A. Update and Add References for ASHRAE and ARI Standards

The existing test procedure references ASHRAE Standards 37–78 and 41.1 (no year) and ARI Standards 210–79, 240–77, and 320–76. The proposed revised version references ARI Standard 210/240–94 and ASHRAE Standards 23–93, 37–88, 41.1–86 (RA 91), 41.2–87 (RA 92), 41.6–94, 41.9–88, 51–99, and 116–95.

B. Air Volume Rates

ARI Standard 240–77 was previously referenced. Now, rather than referencing ARI Standard 210/240–94, we have added sections within this proposed test procedure. The main reason for no longer referencing ARI Standard 210/240 is that it does not cover variable-speed, constant CFM blowers and does not directly address two-capacity and variable-speed systems. It is preferable to have the overall issue of air volume rates covered in one place rather than in two. The main objective is to agree on air flow rate specifications. If ARI Standard 210/240 is revised to cover these systems, DOE may again reference the ARI Standard.

ASHRAE Standard 37–78 (or 37–88) is no longer referenced for the equation calculating the air volume rate of standard air. The factor $1+W_n$ is missing from the denominator of the equation given in Standard 37–88. This change has been adopted by the committee working to revise Standard 37.

Today's proposed test procedure adopts the approach used in the ISO Standard 5151 of conducting each test at zero external static pressure when testing a non-ducted unit.

C. Cyclic Testing

Industry practice and the method described in ASHRAE Standard 116 was adopted. Section 5.1 of the current Appendix M implies that the air volume rate is to be measured during cyclic tests. Standard test laboratory practice is to try to obtain the same velocity pressure or nozzle static pressure drop that was obtained during the comparable steady-state test. The air volume rate used in the cyclic test calculations is assumed to be the same air volume rate measured during the comparable steady-state test. This change is reflected in this proposed test procedure.

Concerning split-type non-ducted (ductless) systems, Section 4.1.1.5 of Appendix M states that ''The integration time for capacity and power shall be from compressor cut-on time to indoor fan cutoff time.'' The indoor fan is operated for 3 minutes prior to compressor cut-on and for 3 minutes after compressor cutoff during the final OFF/ON interval. This proposed test procedure adopts industry practice and integrates power from compressor OFF to compressor OFF and subtracts the electrical energy associated with operating the indoor fan during the initial 3-minute fan-only period. Space cooling capacity is integrated from compressor ON to indoor fan OFF. As with the present test procedure, fan energy for the three minutes after compressor cutoff is added to the integrated cooling capacity.

The present test procedure does not contain specific information regarding the air dampers: where to install them, how well they should seal, and how quickly they should respond. Much of this information is given in Appendix B of ARI Standard 210/240–94. Needed information is incorporated within the text of the proposed test procedure rather than making specific references to each pertinent section of Appendix B of the ARI Standard.

For dry coil tests, the proposed test procedure adopts ARI Standard 210/

240–94 Appendix B language with regard to the requirement that the drain pan be plugged and that the pan should be completely dry.

This notice of proposed rulemaking clarifies that the requirement of making electrical energy measurements using an instrument having an accuracy of ±0.5 percent of reading applies during both the ON and OFF intervals of cyclic tests.

Existing Section 4.1.3.1, which reads ''The indoor and outdoor average dry-bulb temperature for the cyclic dry coil test D shall both be within 1.0 °F of the indoor and outdoor average dry bulb temperature for the steady-state dry coil test C, respectively,'' has been removed from the proposed test procedure. This requirement is automatically met given the 0.5 °F test condition tolerance associated with each test.

For units having a variable-speed indoor fan, the manufacturer will have the option of conducting the cyclic tests with the indoor fan enabled or disabled, the latter being the default option if an attempt at testing with the fan enabled is unsuccessful. Specifically, if testing with the indoor fan operating and it automatically reverses, shuts down, or operates at an uncharacteristically high external static pressure, then a pull-thru method, where the fan is disabled, must be used. Although allowing the option of testing with the fan disabled is needed because of the potential fighting between the unit's fan and the exhaust fan of the air flow measuring apparatus, DOE seeks data from cyclic tests where the fan operates versus tests where the fan is disabled and the pull-thru method is used.

Although a unit having a variable-speed indoor fan may be designed to ramp its fan speed when cycling on and/or off, a step response in air volume rate is nonetheless required during cyclic tests. The work associated with moving the additional air during the ramp periods is performed by the exhaust fan of the air flow measuring apparatus. The step response begins at the initiation of ramp up and ends at the termination of ramp down. The rationale for imposing the step change is mainly due to the difficulty in obtaining the ramp response and then making an accurate measurement of the space conditioning delivered. Systems having indoor fans that ramp are expected to have low cyclic degradation coefficients (C_D) regardless of whether the ramp feature is used, thus the absolute improvement in C_D is expected to be minor. Still, the proposed method of testing will benefit these units. DOE has only been able to obtain data from one unit where two different ramp profiles were compared to the results from imposing step responses in air flow. In one case C_D went from 0.05 (''truth'': ramp) to 0.02 (approximation: step change) while in the second case the values were 0.025 and 0.00. DOE seeks additional data showing the difference between the ramp and step responses during cyclic tests.

D. Fanless (Coil-only) Units

Section 4.1 of the existing Appendix M calls for corrections to capacity and power based on CFM. Section 4.2 of existing Appendix M calls for corrections to capacity and power based on SCFM. ITS uses SCFM in all cases. Thus, the proposed test procedure adopts the practice of only specifying the corrections in terms of SCFM.

The proposed test procedure also adopts the ARI Standard 210/240–94 Appendix B requirement that a specific enclosure be constructed (1 inch ductboard) when testing a coil only unit that does not employ an enclosure.

E. Frost Accumulation Test

The proposed test procedure adopts the ASHRAE Standard 116–95 and ARI 210/240–94 convention of specifying the outdoor wet bulb temperature (33 °F) in place of the presently specified dew point temperature (30 °F).

F. Test Tolerance Tables

The current Appendix M contains tables covering all tests except steady-state cooling mode tests, for which Table III in ASHRAE Standard 37–78 is referenced. Table III of ASHRAE Standard 37–78 has been added to the proposed test procedure since all the other tables are included in Appendix M.

The test tolerance tables have been improved. For example, although a test condition tolerance for external resistance to air flow is provided in the current test procedure, it is not applicable for ducted units. Such a test condition tolerance is, however, now applicable to non-ducted units. Also, a test condition tolerance has been added for electrical supply voltage (previously, only a test operating tolerance was specified). Because ASHRAE Standard 37–78 does not cover cooling mode dry coil tests, a test condition tolerance on the indoor inlet wet bulb temperature is not applicable. Test tolerances given on the outdoor outlet dry and wet bulb temperatures are now noted as only being applicable when the Outdoor Air Enthalpy Method is used to provide the secondary capacity measurement.

For the Frost Accumulation Test, the intervals considered to be heating versus defrosting have been modified slightly. Specifically, in the existing test procedure in Section 4.2.3.3, the first 5 minutes after a defrost termination was included in the defrost interval. In the proposed test procedure, the time interval has been increased to 10 minutes. Also, in making the test condition conversion of 30° F dew point to 33° F wet bulb, the test operating tolerance and test condition tolerance convert to wet bulb temperature tolerances of 0.6° F and 0.3° F, respectively. This 0.6° F test operating tolerance on outdoor wet bulb temperature is more stringent than the value allowed for the steady-state tests. The 0.3° F test condition tolerance is the same as required for steady-state tests. Given that these tolerances should be less stringent that those required of a steady-state test, the proposed test procedure adopts the values given in ASHRAE Standard 37: 1.5° F and 0.5° F.

G. Pretest Intervals

Statements given in the DOE proposed test procedure regarding operation prior to recording data have been modified. These changes are as follows.

1. Wet Coil Tests

Existing: ''The test room reconditioning apparatus and the equipment under test shall be operated until equilibrium conditions are attained'' (Section 4.1.1.1).

Proposed: ''For the pretest interval, operate the test room reconditioning apparatus and the unit to be tested until maintaining equilibrium conditions for at least 30 minutes at the specified Section 3.2 test conditions'' (Section 3.3).

2. Dry Coil Steady-State Test

Existing: ''The test room reconditioning apparatus and the equipment under test shall be operated until equilibrium conditions are attained, but not for less than one hour before data for test C are recorded'' (Section 4.1.1.2).

Proposed: Same as proposed for Section 3.3 wet coil tests with the additional requirement to '' * * * operate the unit at least one hour after achieving dry coil conditions'' (Section 3.4).

3. Dry Coil Cyclic Test

Existing: '' * * * test unit shall be manually cycled 'off' and 'on' * * * until steadily repeating ambient conditions are again achieved in both the indoor and outdoor test chambers, but for not less than two complete 'off/on' cycles'' (Section 4.1.1.2).

Proposed: ''After completing a minimum of two complete compressor

OFF/ON cycles, determine the overall cooling delivered and total electrical energy consumption during any subsequent data collection interval where the test tolerances given in Table 8 are satisfied'' (Section 3.5).

4. Maximum and High Temperature Heating Mode Tests

Existing: ''The test room apparatus and test units must be operated for at least one hour with at least one-half hour at equilibrium and at the specified test conditions prior to starting the test'' (Section 4.2.1.1).

Proposed: ''For the pretest interval, operate the test room reconditioning apparatus and the heat pump until equilibrium conditions are maintained for at least 30 minutes at the specified Section 3.6 test conditions'' (Section 3.7).

5. Heating Mode Cyclic Test

Existing: '' * * * and be cycled 'on' and 'off' as specified in 3.2.1.2 until steadily repeating ambient conditions are achieved for both the indoor and outdoor test chambers, but for not less than two complete 'off'/'on' cycles'' (Section 4.2.1.2).

Proposed: Same as for the dry coil cooling mode cyclic test (see above).

6. Frost Accumulation Test

Existing: ''The test room reconditioning equipment and the unit under test shall be operated for at least one-half hour prior to the start of a 'preliminary' test period'' (Section 4.2.1.3).

Proposed: ''Operate the test room reconditioning apparatus and the heat pump for at least 30 minutes at the specified Section 3.6 test conditions before starting the 'preliminary' test period'' (Section 3.9).

7. Low Temperature Test

Existing: ''The test room reconditioning equipment shall first be operated in a steady-state manner for at least one-half hour at equilibrium and at the specified test conditions. The unit shall then undergo a defrost, either automatic or manually induced'' (Section 4.2.1.4).

Proposed: Same as for the Maximum and High Temperature Heating mode tests (see above) with the following additions. ''After satisfying the Section 3.7 requirements for the pretest interval, but before you begin collecting data to determine $\dot{Q}_h^k(17)$ and $\dot{E}_h^k(17)$, conduct a defrost cycle. This defrost cycle may be manually or automatically initiated. (Section 3.10).

H. Multi-Capacity Systems

1. Two-Capacity Heat Pumps that Lock Out Low Capacity at Higher Outdoor Temperatures.

The existing test procedure covers two-capacity units that operate exclusively at high capacity when the building load exceeds the unit's low capacity. The Department is unaware of any two-capacity units that implement such a control strategy and so coverage of them is excluded from today's proposed test procedure. However, coverage was added to address units that lock out low capacity operation at low (heating) or high (cooling) outdoor temperatures. For this new case, a step was added which reverts to a single capacity calculation. The proposed test procedure uses the C_D determined based on cycling at low capacity (or the 0.25 default) in all cases. The Department welcomes comments on any control strategy used by two-capacity units that are not adequately covered in today's proposed test procedure.

2. Systems Having a Single-Speed Compressor and a Variable-Speed Indoor Fan Where Fan Speed or Air Volume Rate Depends on Outdoor Temperature.

The proposed test procedure requires two extra steady-state tests for the cooling mode (see Table 4) and two extra steady-state tests for the heating mode (see Table 10). An extra Frost Accumulation test is optional.

3. Specification of the Air Volume Rate for Tests at Low Capacity

In the existing test procedure, the air volume rate to be used when testing a two capacity system while operating at low capacity is not explicitly addressed. The proposed test procedure requires the use of the fan laws, as is now done for variable-speed systems, to determine the air volume rate when testing a unit having an indoor fan. For fanless units, the air volume rate used when conducting tests at low capacity (i.e., the Minimum Air Volume Rate) is the higher of

(1) The rate specified by the manufacturer; or

(2) 75 percent of the air volume rate used for the high capacity tests.

DOE believes that a lower limit is needed given the finite capabilities of the typical multi-speed furnace blower that is used in field installations. The 75 percent minimum is based on very limited data collected by NIST. The subject has been discussed by industry members at such forums as ASHRAE meetings but no formal consensus has yet been reached for the specified percentage. Data and comments are requested, especially with regard to the specified value of the lower limit.

I. Triple-split Systems

The DOE test procedure refers to ASHRAE Standard 37 on the issue of equipment installation and test set up procedures. ASHRAE Standard 37, in turn, states that you must use the calorimeter air-enthalpy method arrangement when testing units where the compressor is in the indoor section and separately ventilated. For this arrangement, an enclosure must be built around the equipment under test within the indoor chamber. The present requirement is burdensome and DOE knows of no one who uses it when testing triple-splits. Furthermore, the heat loss from the indoor compressor section should be reflected in an adjusted output capacity and not by a raised entering air temperature. The amount of heat dissipated to the ambient by the indoor compressor section of such units is usually minimized as a result of the enclosure of the third section being insulated (mainly in an effort to reduce the operating noise). Based on limited information gained to date, the amount of heat lost from the indoor compressor section is on the order of 2 percent or less of the unit's space conditioning capacity.

The proposed test procedure instructs that triple-split systems are not to be tested using the calorimeter air-enthalpy method arrangement (see note in Section 2.6). At this juncture, no algorithm or method for assigning/determining the heat loss from the indoor compressor section is included. If triple-split systems become more popular and if information becomes available indicating the heat loss from the indoor compressor section exceeds 2 percent of the total, air-side capacity, then DOE will revisit the option of having a capacity adjustment.

J. Time-Adaptive Defrost Control Systems

When conducting a Frost Accumulation test on a heat pump having a time-adaptive defrost control system, repeatable frosting and defrosting intervals typically require (if obtainable at all) an excessive number of cycles. Until a better alternative is identified, defrosts initiated during the ''preliminary'' test and the ''official'' test will be manually induced. The manufacturer will be required to provide information as to how long the unit would optimally frost before initiating a defrost. The manufacturer will have to provide information on

how to induce a defrost cycle at the appropriate elapsed time. The controls of the unit, however, will still control the duration of the defrost cycle, once initiated.

K. Test Unit Installation

For the most part, equipment installation requirements will continue to be performed according to the manufacturer's installation instructions. However, the proposed test procedure adopts the lab and field practice of insulating the low pressure line(s) of a split system. Also, Section 2.2.5 restricts the use of special refrigerant charging criteria for lab testing.

L. Test Apparatus and Measurement/ Sampling Frequency

1. Inlet Plenum for Blower Coils

In the current DOE test procedure, no inlet plenum is required when testing blower coil units. The proposed test procedure recommends that an inlet plenum be installed if space permits. (Lab ceiling height on vertical installation is a limitation.) The test procedure recommends using an inlet plenum that is constructed according to the design specified for fanless units. See Section 2.4.2.

2. Manifolded Static Pressure Taps

The triple-T configuration was found in 1976 to be the preferred method for manifolding static pressure taps (''The design of piezometer rings'' by K. A. Blake, Journal of Fluid Mechanics, Vol. 78, part 2, pp. 415–428). The triple-T configuration and the more widely used complete ring, four-to-one manifolding configuration are presently part of the draft revision of ASHRAE Standard 37. This revised test procedure recommends use of either of these two manifolding methods, which are shown in Figure 1. The broken ring, four-to-one manifolding configuration may be used but is not recommended.

3. Temperature Measurement Intervals

The proposed test procedure specifies that dry-bulb temperature measurements are to be measured at the intervals specified in ASHRAE Standard 41.1–86 (RA91). Wet bulb temperature, dew point temperature, or relative humidity are to be measured at the minimum sampling interval specified in Definition 1.14.

4. Temperature Measurement Accuracies

The proposed test procedure defers entirely to ASHRAE Standard 41.1–86 (RA 91) for accuracy and precision requirements.

5. Grid of Individual Temperature Sensors Within the Indoor-Side Outlet Plenum

The proposed test procedure adopts the ARI Standard 210/240–94 Appendix B requirements that a temperature spread of 1.5 °F or less be obtained, and that the outlet temperature grid be composed of a minimum of 9 sensors (while recommending 16). Also, the proposed test procedure recommends redundant sensors to determine the change in dry bulb temperature across the indoor coil.

6. Duct Loss Correction

The proposed test procedure adds a correction for the heat transfer between the test room and an outlet duct sandwiched between the coil and the outlet temperature grid. This correction is already an industry practice.

7. Water vapor measurements using a dew-point hygrometer, a relative humidity meter, or any other alternative instrument

Today's test procedure explicitly permits alternatives to using wet bulb temperature sensors. To ease instrumentation selection, required instrument accuracies are provided for dew point hygrometers and relative humidity meters.

8. Voltmeter Accuracy

The required accuracy of voltage measurements has been changed from ±2% to ±1%.

9. Electrical Power Measurement

Adjustable-speed-driven motors, as used in a variable-speed compressor, distort the input current and, to a lesser degree, voltage waveforms. Published literature [1–7] supports avoiding the use of induction type meters for measuring such non-sinusoidal power and instead recommends using a meter that is capable of sampling up to the 50th harmonic. This point is included in Section 2.8 of today's test procedure as a recommendation when testing a heat pump or air conditioner having a variable-speed compressor. (In terms of a meter sampling frequency, a 50th harmonic requirement corresponds to a minimum sampling frequency between 3 and 30 kHz, depending upon which technical recommendation you wish to cite.)

The majority of the technical references listed below report the performance of specific meters with specific waveforms, some of which should be representative of those found in presently-marketed residential-size air conditioners and heat pumps. In addition to induction watthour meters, a disconcerting result reported in the noted references is that the use of a non-induction meter that can measure up to the 50th harmonic does not insure an accurate measurement but only improves your chances.

References:

1. P.S. Filipski and R. Arseneau, ''Behavior of Wattmeters and Watthour Meters Under Distorted Waveform Conditions,'' IEEE tutorial course, Nonsinusoidal Situations: Effects on the Performance of Meters and Definitions of Power, IEEE, Piscataway, NJ, pp. 13–22, 1990.
2. A. Domijan, Jr., E. Embriz-Santander, A.J. Gilani, G. Lamer, C. Stiles, and C.W. Williams, Jr., ''Watthour Meter Accuracy Under Controlled Unbalanced Harmonic Voltage and Current Conditions,'' IEEE Transactions Power Delivery, Vol. II, No. 1, pp. 64–78, Jan. 1996.
3. A. Domijan, D. Czarkowski, A. Abu-aisheh, and E. Embriz-Santander, ''Measurements of Electrical Power Inputs to Variable Speed Motors and Their Solid State Power Converters—Phase II,'' ASHRAE Research Project 770, Final Report, November 30, 1995.
4. D. Czarkowski and A. Domijan, Jr., ''Performance of Electrical Power Meters and Analyzers in Adjustable-Speed Drive Applications,'' American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Transactions 1997, Vol. 103, Part 1.
5. A.J. Baldwin, N.G. Planer, D.E. Nordell, N. Hohan, ''Evaluation of Electrical Interference to the Induction Watthour Meter,'' EPRI EL–2315, Research Project 1738, Final Report, April 1982.
6. Institute of Electrical and Electronics Engineers (IEEE), Inc., ''IEEE Standard 519–1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems,'' New York, New York.
7. A. Domijan, and E. Embriz-Santander, ''Measurements of Electrical Power Inputs to Variable Speed Motors and Their Solid State Power Converters,'' American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Transactions 1993, Vol. 99, Part I, pp. 241–258.

M. Different Compressor Speeds and Indoor Fan Capacities Between Cooling and Heating

In the existing test procedure, variable-speed systems that operate at higher speeds when heating than when cooling are covered. In today's proposed revision (as noted above in III.D.4) this allowance has been extrapolated to coverage of two-capacity heat pumps that only operate at low capacity during the cooling season while using both low and high capacities when heating. And, in taking a generic approach, today's test procedure covers any case where the heat pump uses different fan speeds or air volume rates for cooling versus when heating. (See Section 3.1.4.4.2)

N. Secondary Test Requirements.

When using the Outdoor Air Enthalpy test method, a preliminary test is conducted to compensate, if necessary, for any performance impact caused by the outdoor air-side test apparatus. In accordance with the existing test procedure, a preliminary test is conducted prior to all steady-state tests (i.e., those tests where a secondary measurement of capacity is required). In today's revision, relaxing this requirement is proposed. Section 3.11.1 indicates that the number of preliminary tests can be reduced in most cases to one (for air conditioners or heating-only heat pumps) or two (for heat pumps): one for the first cooling mode steady-state test and one for the first heating mode steady-state test.

O. HSPF Calculations

The last paragraph of Sections 5.2.1 and 5.2.2 of the existing test procedure are not similarly placed in the proposed test procedure. The paragraph in question reads ''Once the maximum and minimum HSPF and operating cost values have been obtained for each region, the HSPF and operating cost shall be determined for each standardized design heating requirement (see section 6.2.6) between the maximum and minimum design heating requirements by means of interpolation.'' The issue of how many HSPF calculations are required has been, and will remain, an item that is covered elsewhere: In 10 CFR part 430, subpart B, § 430.23(m)(3)(ii). In the proposed test procedure, this section along with a short restatement of its contents are included in the Definition (1.27) for HSPF. Because of the relative ease of automating the calculation process, and the nonlinearity of the HSPF versus design heating requirement relationship, no reference is made to obtaining HSPF or operating cost via interpolation.

V. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this notice, the Department proposes amendments to the test procedures for central air conditioners and heat pumps. We have reviewed the proposed rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, DOE regulations for compliance with NEPA, 10 CFR part 1021, and the Secretarial Policy on the National Environmental Policy Act (June 1994). The Department has determined that this rulemaking is covered under the Categorical Exclusion found at paragraph A.6 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. This proposed rule is a procedural rulemaking and its implementation will not affect the quality or distribution of energy usage and therefore will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Regulatory Review

Today's regulatory proposal has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs in the Office of Management and Budget.

C. Regulatory Flexibility Review

The proposed rule has been reviewed under the Regulatory Flexibility Act, (42 U.S.C. 601–612), which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses and other small entities. The proposed rule affects manufacturers of central air conditioners and heat pumps. The test procedures would not have a significant economic impact, but rather, would provide common testing methods. This revision of the test procedure will not require a significant investment for new testing equipment. DOE accordingly certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not required.

D. ''Takings'' Assessment Review

DOE has determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this proposed regulation, if adopted, would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

E. Federalism Review

Executive Order 13132 (64 FR 43255, August 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by the Executive Order.

F. Paperwork Reduction Act Review

This proposed rule contains no new collections of information under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

G. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Department prepare an impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million

or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

H. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed rulemaking under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, we have concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Plain Language Review

The President's Memorandum on ''Plain Language in Government Writing,'' 63 FR 31885 (June 10, 1998) directs each federal agency to write all published rulemaking documents in plain language. The Memorandum includes general guidance on what constitutes ''plain language.'' Plain language requirements will vary from one document to another, depending on the intended audience, but all plain language documents should be logically organized and clearly written.

We have tried to make this proposed rule easy to understand. We are also requesting suggestions on how to improve its readability further.

VI. Public Comment Procedures

A. Written Comment Procedures

The Department invites interested persons to participate in the proposed rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in today's proposed rule to Ms. Brenda Edwards-Jones, at the address indicated at the beginning of this notice. We will consider all submittals received by the date specified at the beginning of this notice in developing the final rule.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Issues for Public Comment

The Department of Energy is interested in receiving comments and data concerning these test procedures. Also, the Department welcomes comments on improvements or alternatives to these approaches. In particular, DOE is interested in gathering comments on the following:

1. Non-defrost (limited-range) heat pumps

Which of the three options described in Section III.A.3 should be invoked?

2. Testing units having a constant-air-volume-rate indoor fan

Are the proposed changes described in Section III.D.1 acceptable? In particular, does the proposed 8 percent tolerance on indoor air volume rate provide a fair balance between assuring repeatable results while not being too restrictive given the variation in blower motor performance?

3. Cyclic testing of units having a variable-speed indoor fan (that may or may not provide a constant air volume rate)

For units that ramp the indoor fan speed when cycling on and/or off, data are sought of the type referenced in the last paragraph of Section IV.C (i.e., data that quantifies the effect on C_D from using a ramped air volume rate versus forcing the air volume rate to have a step profile). Also, as described in the second-to-last paragraph of Section IV.C, data from cyclic tests conducted with the indoor fan enabled and disabled are sought.

4. Two-capacity heat pumps that are designed to meet the seasonal cooling load while operating at low capacity

As discussed in the last paragraph of Section III.D.4, should the heat pump be required to have controls that lock out high capacity operation when cooling?

5. Lower limit on the air volume rate used when testing a fanless, two-capacity unit at low compressor capacity

As discussed in Section IV.H.3, data and comments are requested regarding the assigned limit for the air volume rate when testing a fanless, two-capacity unit at low compressor capacity.

Related to this issue is whether the manufacturer should be required to supply, with the unit, the hardware needed to allow the use of two fan speeds on the furnace blower that the unit would be used with in the field. Conceivably, if such hardware was not provided, the test procedure could call for using the same air volume rate for all

tests, regardless of whether the compressor is operating at high or low capacity. On the other extreme, do any manufacturers provide hardware that allows a multi-speed furnace blower to operate as a variable-speed blower? Or, are there safeguards that will result in all or the vast majority of fanless, two-capacity units to be applied with furnaces having variable-speed blowers? If so, then the lower limit noted in the previous paragraph may not be applicable.

6. Fan defaults for fanless (i.e., coil-only) two-capacity units

In the existing test procedure, the fan heat/power default that is applied when rating fanless units is 1250 Btu/h per 1000 SCFM (365 watts per 1000 SCFM). When testing two-capacity fanless units, this adjustment is applied when evaluating space conditioning capacities and electrical power usages for both high and low compressor capacity operation. Do blower curves for multi-speed indoor fans support the use of the same default for both low and high capacity?

7. Differentiation among two-capacity air conditioners and heat pumps

Is there a need to differentiate between two-capacity units that can transition between high and low compressor capacities on-the-fly versus units that must shut off the compressor for some finite time interval when transitioning? Both the existing test procedure and today's proposed revision do not offer a means for providing such differentiation. To begin to do so would require information on how EER and COP are affected as they change from the value associated with steady operation at one compressor capacity until steady operation is obtained at the other compressor capacity following the transition. DOE seeks comments and data that would help to determine whether the test procedure needs to account for low/high compressor transitioning performance.

8. Testing single-packaged units

Today's proposed test procedure includes new test requirements when testing certain types of single-packaged units. The proposed additions are summarized in III.C.1. As presently proposed, the changes are limited to cooling mode tests where all or part of the indoor section is located in the outdoor test room and to heating mode tests where all or part of the outdoor section is located in the indoor test room. Comments are sought on the general proposal and on whether the approaches should be invoked when testing all packaged units.

9. Multi-capacity units

Are there any multi-capacity units that operate at less than maximum speed or high capacity at the lowest outdoor temperatures (prior to cycling off the compressor, if applicable)? Possibly such a strategy is needed to insure component reliability. Such a contingency is not covered in the existing or proposed test procedure.

10. Cyclic degradation coefficients

Comments are sought on the proposed actions discussed above in Section III.D.6 for working towards new C_D defaults.

11. NAECA energy conservation standards

Changes introduced in today's proposed test procedure are not expected to cause a minimally-compliant unit to now become non-compliant. If a particular proposed change is found to negatively affect minimally compliant units, then DOE would like to know.

12. Small-duct, high-velocity systems

Comments are sought on the proposed actions discussed in Section III.A.2.

C. Public Workshop

1. Procedures for Submitting Requests to Speak

You will find the time and place of the public workshop listed at the beginning of this notice of proposed rulemaking. The Department invites any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or send them by mail or e-mail to brenda.edwards-jones@ee.doe.gov.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson, briefly describe the nature of the interest in the rulemaking, and provide a telephone number for contact.

The Department requests each person wishing to speak to submit an advance copy of his or her statement at least 10 days prior to the date of this workshop as indicated at the beginning of this notice. The Department, at its discretion, may permit any person wishing to speak who cannot meet this requirement to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The letter making a request to give an oral presentation must ask for such alternative arrangements.

2. Conduct of Workshop

The workshop (hearing) will be conducted in an informal, conference style. The Department may use a professional facilitator to facilitate discussion, and a court reporter will be present to record the transcript of the meeting. We will present summaries of comments received before the workshop, allow time for presentations by workshop participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Following the workshop, we will provide an additional comment period, during which interested parties will have an opportunity to comment on the proceedings at the workshop, as well as on any aspect of the rulemaking proceeding.

The Department will arrange for a transcript of the workshop and will make the entire record of this rulemaking, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC., on December 19, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, part 430 of Chapter II of Title 10, Code of Federal Regulations is proposed to be amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.22 is amended:

a. By adding paragraphs (b)(5)3. through (b)(5)10.;

b. by adding paragraph (b)(7).

The additions specified above read as follows:

§ 430.22 Reference Sources.

* * * * *

(b) * * *

(5) * * *

3. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 23–1993, ''Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units.''

4. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 37–1988, ''Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment.''

5. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 41.1–1986 (Reaffirmed 1991), ''Standard Method for Temperature Measurement.''

6. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 41.2–1987 (Reaffirmed 1992), ''Standard Method for Laboratory Airflow Measurement.''

7. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 41.6–1994, ''Method for Measurement of Moist Air Properties.''

8. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 41.9–1988, ''A Standard Calorimeter Test Method for Flow Measurement of a Volatile Refrigerant.''

9. American Society of Heating, Refrigerating, and Air-Conditioning Engineers/Air Moving and Conditioning Association, Inc. Standard 51–1999, ''Laboratory Methods of Testing Fans for Rating.''

10. American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 116–1995, ''Methods of Testing for Rating for Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps.''

* * * * *

(7) Air-Conditioning and Refrigeration Institute (ARI), 4301 North Fairfax Drive, Suite 425, Arlington, Virginia 22203, (703) 524–8800, ARI Standard 210/240–1994, ''Unitary Air-Conditioning and Air-Source Heat Pump Equipment.''

* * * * *

3. Appendix M to Subpart B is revised to read as follows:

Appendix M to Subpart B—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

1. Definitions

2. Testing Conditions

2.1 Test room requirements
2.2 Test unit installation requirements.
2.2.1 Defrost control settings
2.2.2 Special requirements for units having a multiple-speed outdoor fan.
2.2.3 Special requirements for multi-split air conditioners and heat pumps, and systems composed of multiple mini-split units (outdoor units located side-by-side) that would normally operate using two or more indoor thermostats.
2.2.4 Wet-bulb temperature requirements for the air entering the indoor and outdoor coils.
2.2.4.1 Cooling mode tests.
2.2.4.2 Heating mode tests.
2.2.5 Additional refrigerant charging requirements
2.3 Indoor air volume rates.
2.3.1 Cooling tests.
2.3.2 Heating tests.
2.4 Indoor coil inlet and outlet duct connections.
2.4.1 Outlet plenum for the indoor coil.
2.4.2 Inlet plenum for the indoor unit
2.5 Indoor coil air property measurements and air damper box applications
2.5.1 Test set-up on the inlet side of the indoor coil: for cases where the inlet damper box is installed
2.5.1.1 If the Section 2.4.2 inlet plenum is installed.
2.5.1.2 If the Section 2.4.2 inlet plenum is not installed
2.5.2 Test set-up on the inlet side of the indoor unit: for cases where no inlet damper box is installed.
2.5.3 Indoor coil static pressure difference measurement
2.5.4 Test set-up on the outlet side of the indoor coil.
2.5.4.1 Outlet air damper box placement and requirements
2.5.4.2 Additional recommendations
2.5.5 Dry bulb temperature measurement
2.5.6 Water vapor content measurement
2.5.7 Air damper box performance requirements
2.6 Airflow measuring apparatus
2.7 Electrical voltage supply
2.8 Electrical power and energy measurements
2.9 Time measurements.
2.10 Test apparatus for the secondary space conditioning capacity measurement
2.10.1 Outdoor Air Enthalpy Method
2.10.2 Compressor Calibration Method
2.10.3 Refrigerant Enthalpy Method.
2.11 Measurement of test room ambient conditions
2.12 Measurement of indoor fan speed
2.13 Measurement of barometric pressure

3. Testing Procedures

3.1 General Requirements
3.1.1 Primary and secondary test methods.
3.1.2 Manufacturer-provided equipment overrides.
3.1.3 Airflow through the outdoor coil.
3.1.4 Airflow through the indoor coil.
3.1.4.1 Cooling Certified Air Volume Rate.
3.1.4.1.1 Cooling Certified Air Volume Rate for Ducted Units.
3.1.4.1.2 Cooling Certified Air Volume Rate for Non-ducted Units.
3.1.4.2 Cooling Minimum Air Volume Rate.
3.1.4.3 Cooling Intermediate Air Volume Rate.
3.1.4.4 Heating Certified Air Volume Rate
3.1.4.4.1 Ducted heat pumps where the Heating and Cooling Certified Air Volume Rates are the same.
3.1.4.4.2 Ducted heat pumps where the Heating and Cooling Certified Air Volume Rates are different due to indoor fan operation.
3.1.4.4.3 Ducted heating-only heat pumps.
3.1.4.4.4 Non-ducted heat pumps, including non-ducted heating-only heat pumps.
3.1.4.5 Heating Minimum Air Volume Rate.
3.1.4.6 Heating Intermediate Air Volume Rate.
3.1.4.7 Heating Nominal Air Volume Rate.
3.1.5 Indoor test room requirement when the air surrounding the indoor unit is not supplied from the same source as the air entering the indoor unit.
3.1.6 Air volume rate calculations.
3.1.7 Test sequence.
3.1.8 Requirement for the air temperature distribution leaving the indoor coil.
3.1.9 Control of auxiliary resistive heating elements.
3.2 Cooling mode tests for different types of air conditioners and heat pumps.
3.2.1 Tests for a unit having a single-speed compressor that is tested with a fixed-speed indoor fan installed, with a constant-air-volume-rate indoor fan installed, or with no indoor fan installed.
3.2.2 Tests for a unit having a single-speed compressor and a variable-speed variable-air-volume-rate indoor fan installed.
3.2.2.1 Indoor fan capacity modulation that correlates with the outdoor dry bulb temperature.
3.2.2.2 Indoor fan capacity modulation based on adjusting the sensible to total (S/T) cooling capacity ratio.
3.2.3 Tests for a unit having a two-capacity compressor.
3.2.4 Tests for a unit having a variable-speed compressor.
3.3 Test procedures for steady-state wet coil cooling mode tests
3.4 Test procedures for the optional steady-state dry coil cooling mode tests
3.5 Test procedures for the optional cyclic dry coil cooling mode tests (the D, D_1, and I_1 Tests)
3.5.1 Procedures when testing ducted systems.
3.5.2 Procedures when testing non-ducted systems
3.5.3 Cooling mode cyclic degradation coefficient calculation.
3.6 Heating mode tests for different types of heat pumps, including heating-only heat pumps.
3.6.1 Tests for a heat pump having a single-speed compressor that is tested with a fixed speed indoor fan installed, with a constant-air-volume-rate indoor fan installed, or with no indoor fan installed.
3.6.1.1 Non-defrost heat pump.
3.6.1.2 Heat pump having a heat comfort controller.

3.6.2 Tests for a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan: capacity modulation correlates with outdoor dry bulb temperature.
3.6.3 Tests for a heat pump having a two-capacity compressor
3.6.4 Tests for a heat pump having a variable-speed compressor.
3.7 Test procedures for steady-state Maximum Temperature and High Temperature heating mode tests (the H0, $H0_1$, H1, $H1_2$, $H1_1$, and $H1_N$ Tests).
3.8 Test procedures for the optional cyclic heating mode tests (the $H0C_1$, H1C, and $H1C_1$ Tests).
3.8.1 Heating mode cyclic degradation coefficient calculation.
3.9 Test procedures for Frost Accumulation heating mode tests
3.9.1 Average space heating capacity and electrical power calculations
3.9.2 Demand defrost credit
3.10 Test procedures for steady-state Low Temperature heating mode tests
3.11 Additional requirements for the secondary test methods
3.11.1 If using the Outdoor Air Enthalpy Method as the secondary test method
3.11.1.1 If a preliminary test precedes the official test
3.11.1.2 If a preliminary test does not precede the official test
3.11.1.3 Official test
3.11.2 If using the Compressor Calibration Method as the secondary test method
3.11.3 If using the Refrigerant Enthalpy Method as the secondary test method
3.12 Rounding of space conditioning capacities for reporting purposes.

4. Calculations of Seasonal Performance Descriptors

4.1 Seasonal Energy Efficiency Ratio (SEER) Calculations
4.1.1 SEER calculations for an air conditioner or heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed
4.1.2 SEER calculations for an air conditioner or heat pump having a single-speed compressor and a variable-speed variable-air-volume-rate indoor fan
4.1.2.1 Units covered by Section 2.1.2.2.1 where indoor fan capacity modulation correlates with the outdoor dry bulb temperature
4.1.2.2 Units covered by Section 2.1.2.2.2 where indoor fan capacity modulation is used to adjust the sensible to total cooling capacity ratio
4.1.3 SEER calculations for an air conditioner or heat pump having a two-capacity compressor.
4.1.3.1 Steady-state space cooling capacity at low compressor capacity is greater than or equal to the building cooling load at temperature T_j
4.1.3.2 Unit alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building cooling load at temperature T_j
4.1.3.3 Unit only operates at high (k=2) compressor capacity at temperature T_j and its capacity is greater than the building cooling load
4.1.3.4 Unit must operate continuously at high (k=2) compressor capacity at temperature T_j
4.1.4 SEER calculations for an air conditioner or heat pump having a variable-speed compressor
4.1.4.1 Steady-state space cooling capacity when operating at minimum compressor speed is greater than or equal to the building cooling load at temperature T_j
4.1.4.2 Unit operates at an intermediate compressor speed (k=i) in order to match the building cooling load at temperature T_j
4.1.4.3 Unit must operate continuously at maximum (k=2) compressor speed at temperature T_j
4.2 Heating Seasonal Performance Factor (HSPF) Calculations
4.2.1 Additional steps for calculating the HSPF of a heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed
4.2.1.1 Space heating capacity and the electrical power consumption calculations for a non-defrost heat pump
4.2.1.2 Space heating capacity and the electrical power consumption calculations for a heat pump having a heat comfort controller
4.2.2 Additional steps for calculating the HSPF of a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan.
4.2.3 Additional steps for calculating the HSPF of a heat pump having a two-capacity compressor.
4.2.3.1 Steady-state space heating capacity when operating at low compressor capacity is greater than or equal to the building heating load at temperature T_j
4.2.3.2 Heat pump alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building heating load at a temperature T_j
4.2.3.3 Heat pump only operates at high (k=2) compressor capacity at temperature T_j and its capacity is greater than the building heating load
4.2.3.4 Heat pump must operate continuously at high (k=2) compressor capacity at temperature T_j
4.2.4 Additional steps for calculating the HSPF of a heat pump having a variable-speed compressor.
4.2.4.1 Steady-state space heating capacity when operating at minimum compressor speed is greater than or equal to the building heating load at temperature T_j
4.2.4.2 Heat pump operates at an intermediate compressor speed (k=i) in order to match the building heating load at a temperature T_j
4.2.4.3 Heat pump must operate continuously at maximum (k=2) compressor speed at temperature T_j
4.3 Calculations
4.3.1 Calculation of actual regional annual performance factors (APF_A) for a particular location and for each standardized design heating requirement
4.3.2 Calculation of representative regional annual performance factors (APF_R) for each generalized climatic region and for each standardized design heating requirement
4.4 Rounding of SEER , HSPF, and APF for reporting purposes

1. Definitions

1.1 *Annual performance factor* means the total heating and cooling done by a heat pump in a particular region in one year divided by the total electric energy used in one year. Section 430.23(m)(3)(iii) of the Code of Federal Regulations states the calculation requirements for this rating descriptor.

1.2 *ARI* means Air-Conditioning and Refrigeration Institute.

1.3 *ARI Standard 210/240–94* means the test standard ''Unitary Air-Conditioning and Air-Source Heat Pump Equipment'' published in 1994 by ARI.

1.4 *ASHRAE* means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.

1.5 *ASHRAE Standard 23–93* means the test standard ''Methods of Testing for Rating Positive Displacement Refrigerant Compressors and Condensing Units'' published in 1993 by ASHRAE.

1.6 *ASHRAE Standard 37–88* means the test standard ''Methods of Testing for Rating Unitary Air-Conditioning and Heat Pump Equipment'' published in 1988 by ASHRAE.

1.7 *ASHRAE Standard 41.1–86 (RA 91)* means the test standard ''Standard Method for Temperature Measurement'' published in 1986 and reaffirmed in 1991 by ASHRAE.

1.8 *ASHRAE Standard 41.2–87 (RA 92)* means the test standard ''Standard Method for Laboratory Airflow Measurement'' published in 1987 and reaffirmed in 1992 by ASHRAE.

1.9 *ASHRAE Standard 41.9–88* means the test standard ''A Standard Calorimeter Test Method for Flow Measurement of a Volatile Refrigerant'' published in 1988 by ASHRAE.

1.10 *ASHRAE Standard 51–99* means the test standard ''Laboratory Methods of Testing Fans for Rating'' published in 1999 by ASHRAE and the Air Movement and Control Association, Inc.

1.11 *ASHRAE Standard 116–95* means the test standard ''Methods of Testing for Rating for Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps'' published in 1995 by ASHRAE.

1.12 *CFR* means Code of Federal Regulations.

1.13 *Constant-air-volume-rate indoor fan* means a fan that varies its operating speed to provide a fixed air volume rate from a ducted system.

1.14 *Continuously recorded,* when referring to a dry bulb measurement, means that the specified temperature must be sampled at regular intervals that are equal to or less than the maximum intervals specified in Section 4.3 part ''a'' of ASHRAE Standard 41.1–86 (RA 91). If such dry bulb temperatures are used only for test room

control, sample at regular intervals that are equal to or less than the maximum intervals specified in Section 4.3 part ''b'' of the same ASHRAE Standard. Regarding wet bulb temperature, dew point temperature, or relative humidity measurements, continuously recorded means that the measurements must be made at regular intervals that are equal to or less than 1 minute.

1.15 *Cooling load factor (CLF)* means the ratio having as its numerator the total cooling delivered during a cyclic operating interval consisting of one ON period and one OFF period. The denominator is the total cooling that would be delivered, given the same ambient conditions, had the unit operated continuously at its steady-state space cooling capacity for the same total time (ON + OFF) interval.

1.16 *Coefficient of Performance (COP)* means the ratio of the average rate of space heating delivered to the average rate of electrical energy consumed by the heat pump. These rate quantities must be determined from a single test or, if derived via interpolation, must be tied to a single set of operating conditions. COP is a dimensionless quantity. When determined for a ducted unit tested without an indoor fan installed, COP must include the Section 3.7, 3.8, and 3.9.1 default values for the heat output and power input of a fan motor.

1.17 *Cyclic Test* means a test where the unit's compressor is cycled on and off for specific time intervals. A cyclic test provides half the information needed to calculate a degradation coefficient.

1.18 *Damper box* means a short section of duct having an air damper that meets the performance requirements of Section 2.5.7.

1.19 *Degradation coefficient (C_D)* means a parameter used in calculating the part load factor. The degradation coefficient for cooling is denoted by C^c_D. The degradation coefficient for heating is denoted by C^h_D.

1.20 *Demand-defrost control system* means a system that defrosts the heat pump outdoor coil only when measuring a predetermined degradation of performance. The heat pump's controls monitor one or more parameters that always vary with the amount of frost accumulated on the outdoor coil (e.g., coil to air differential temperature, coil differential air pressure, outdoor fan power or current, optical sensors, etc.) at least once for every ten minutes of compressor ON-time when space heating. One acceptable alternative to the criterion given in the prior sentence is a feedback system that measures the length of the defrost period and adjusts defrost frequency accordingly.[1] In all cases, when the frost parameter(s) reaches a predetermined value, the system initiates a defrost. In a demand-defrost control system, defrosts are terminated based on monitoring a parameter(s) that indicates that frost has been eliminated from the coil.

A demand defrost control system, which otherwise meets the above requirements, may allow time-initiated defrosts if, and only if, such defrosts occur after 6 hours of compressor operating time.

1.21 *Design heating requirement (DHR)* predicts the space heating load of a residence when subjected to outdoor design conditions. Estimates for the minimum and maximum DHR are provided for six generalized U.S. climatic regions in Section 4.2.

1.22 *Dry-coil tests* are cooling mode tests where the wet-bulb temperature of the air supplied to the indoor coil is maintained low enough that no condensate forms on this coil.

1.23 *Ducted system* means an air conditioner or heat pump that is designed to be permanently-installed equipment and delivers conditioned air to the indoor space through a duct(s). The air conditioner or heat pump may be either a split system or a single-packaged unit.

1.24 *Energy efficiency ratio (EER)* means the ratio of the average rate of space cooling delivered to the average rate of electrical energy consumed by the air conditioner or heat pump. These rate quantities must be determined from a single test or, if derived via interpolation, must be tied to a single set of operating conditions. EER is expressed in units of

$$\frac{\text{Btu / h}}{\text{W}}.$$

When determined for a ducted unit tested without an indoor fan installed, EER must include the Section 3.3 and 3.5.1 default values for the heat output and power input of a fan motor.

1.25 *Heating load factor (HLF)* means the ratio having as it numerator the total heating delivered during a cyclic operating interval consisting of one ON period and one OFF period. The denominator is the total heating that would be delivered, given the same ambient conditions, if the unit operated continuously at its steady-state space heating capacity for the same total time (ON + OFF) interval.

1.26 *Heat pump having a heat comfort controller* means equipment that regulates the operation of the electric resistance elements to assure that the air temperature leaving the indoor section does not fall below a specified temperature. This specified temperature is usually field adjustable. A method for testing and rating heat pumps having a heat comfort controller is presently limited to heat pumps that meet the equipment criteria of Section 3.6.1.

1.27 *Heating seasonal performance factor (HSPF)* means the total space heating required during the space heating season, expressed in Btu's, divided by the total electrical energy consumed by the heat pump system during the same season, expressed in watt-hours. For all heat pumps, HSPF accounts for the heating delivered and the energy consumed by auxiliary resistive elements when operating below the balance point. This condition occurs when the building load exceeds the space heating capacity of the heat pump condenser. For heat pumps with heat comfort controllers (see Definition 1.26), in addition, HSPF also accounts for resistive heating contributed when operating above the balance point as a result of maintaining a minimum supply temperature. Unless an approved alternative rating method is used, as set forth in 10 CFR part 430, subpart B, § 430.24(m), HSPF must be calculated according to this appendix. Repeat the calculations for each of the six generalized U.S. climatic regions listed in this appendix. For each region, evaluate an HSPF for each standardized design heating requirement that applies. (See 10 CFR part 430 subpart B, § 430.23(m)(3)(ii).) The HSPF used to evaluate compliance with the Energy Conservation Standards (see 10 CFR part 430, subpart C, § 430.32(c)) is based on Region IV, the minimum standardized design heating requirement, and the sampling plan stated in 10 CFR part 430, subpart B, § 430.24(m).

1.28 *Mini-split air conditioners and heat pumps* means non-ducted systems that have a single outdoor section and one or more indoor sections. The indoor sections cycle on and off in unison in response to a single indoor thermostat.

1.29 *Multiple-split air conditioners and heat pumps* means non-ducted systems that have two or more indoor sections. The indoor sections operate independently and can be used to space condition multiple zones in response to multiple indoor thermostats.

1.30 *Non-defrost heat pumps* means equipment that is incapable of defrosting the outdoor coil. The equipment ceases to operate the refrigeration system at outdoor temperatures that are conducive to frost accumulation. A method for testing and rating non-defrost heat pumps is presently limited to heat pumps that meet the equipment criteria of Section 3.6.1.

1.31 *Non-ducted system* means an air conditioner or heat pump that is designed to be permanently-installed equipment and directly heats or cools air within the conditioned space using one or more indoor coils that are mounted on room walls and/or ceilings. The unit may be of a modular design that allows for combining multiple outdoor coils and compressors to create one overall system. Non-ducted systems covered by this test procedure are all split systems.

1.32 *Part-load factor (PLF)* means the ratio of the cyclic energy efficiency ratio (coefficient of performance) to the steady-state energy efficiency ratio (coefficient of performance). Evaluate both energy efficiency ratios (coefficients of performance) based on operation at the same ambient conditions.

1.33 *Seasonal energy efficiency ratio (SEER)* means the total heat removed from the conditioned space during the annual space cooling season, expressed in Btu's, divided by the total electrical energy consumed by the air conditioner or heat pump during the same season, expressed in watt-hours. Unless using an approved alternative rating method, as set forth in 10 CFR part 430, subpart B, § 430.24(m), SEER must be calculated according to Section 4.1 of this appendix. [See 10 CFR part 430, subpart B, 430.23(m)(3)(i).] This Section 4.1 SEER and the sampling plan stated in 10 CFR subpart B, 430.24(m) are used to evaluate compliance with the Energy Conservation Standards. (See 10 CFR part 430, subpart C, § 430.32(c).)

1.34 *Single-packaged unit* means any central air conditioner or heat pump that has all major assemblies enclosed in one cabinet.

[1] Systems that vary defrost intervals according to outdoor dry-bulb temperature are not demand defrost systems.

1.35 *Split system* means any air conditioner or heat pump that has one or more of the major assemblies separated from the others.

1.36 *Standard Air* means dry air at 70 °F and 14.696 psia. Under these conditions, dry air has a mass density of 0.075 lb/ft.^{3}

1.37 *Steady-state test* means a test where the test conditions are regulated to remain as constant as possible while the unit operates continuously in the same mode.

1.38 *Temperature bin* means the 5 °F increments that are used to partition the outdoor dry-bulb temperature ranges of the cooling (≥ 65 °F) and heating (< 65 °F) seasons.

1.39 *Test condition tolerance* means the maximum permissible difference between the average value of the measured test parameter and the specified test condition.

1.40 *Test operating tolerance* means the maximum permissible range that a measurement may vary over the specified test interval. The difference between the maximum and minimum sampled values must be less than or equal to the specified test operating tolerance.

1.41 *Time adaptive defrost control system* is a demand-defrost control system (see Definition 1.20) that measures the length of the prior defrost period(s) and uses that information to automatically determine when to initiate the next defrost cycle.

1.42 *Time-temperature defrost control systems* initiate or evaluate initiating a defrost cycle only when a predetermined cumulative compressor ON-time is obtained. This predetermined ON-time is generally a fixed value (*e.g.,* 30, 45, 90 minutes) although it may vary based on the measured outdoor dry-bulb temperature. The ON-time counter accumulates if controller measurements (*e.g.,* outdoor temperature, evaporator temperature) indicate that frost formation conditions are present, and it is reset/remains at zero at all other times. In one application of the control scheme, a defrost is initiated whenever the counter time equals the predetermined ON-time. The counter is reset when the defrost cycle is completed. In a second application of the control scheme, one or more parameters are measured (*e.g.,* air and/or refrigerant temperatures) at the predetermined, cumulative, compressor ON-time. A defrost is initiated only if the measured parameter(s) falls within a predetermined range. The ON-time counter is reset regardless of whether a defrost is initiated. If systems of this second type use cumulative ON-time intervals of 10 minutes or less, then the heat pump may qualify as having a demand defrost control system (see Definition 1.20).

1.43 *Triple-split system* means an air conditioner or heat pump that is composed of three separate components: An outdoor fan coil section, an indoor fan coil section, and an indoor compressor section.

1.44 *Two-capacity (or two-stage) compressor* means an air conditioner or heat pump that has one of the following:

(1) A two-speed compressor,

(2) Two compressors where only one compressor ever operates at a time,

(3) Two compressors where one compressor (Compressor #1) operates at low loads and both compressors (Compressors #1 and #2) operate at high loads but Compressor #2 never operates alone, and

(4) A compressor that is capable of cylinder or scroll unloading.

For such systems, *low capacity* means:

(1) Operating at low compressor speed,

(2) Operating the lower capacity compressor,

(3) Operating Compressor #1, and

(4) Operating with the compressor unloaded (*e.g.,* operating one piston of a two-piston reciprocating compressor, using a fixed fractional volume of the full scroll, etc.).

High capacity means:

(1) Operating at high compressor speed,

(2) Operating the higher capacity compressor,

(3) Operating Compressors #1 and #2, and

(4) Operating with the compressor loaded (*e.g.,* operating both pistons of a two-piston reciprocating compressor, using the full volume of the scroll).

1.45 *Wet-coil test* means a test conducted at test conditions that typically cause water vapor to condense on the test unit evaporator coil.

1.46 *Small-duct system* means equipment that contains a blower and indoor coil combination that produces at least 1.5 inches of external static across the indoor unit when operated at the certified air volume rate. When applied in the field, small-duct systems use branch ducts having less than 6.0 square inches of free area.

1.47 *ASHRAE Standard 41.6–94* means the test standard ''Method for Measurement of Moist Air Properties'' published in 1994 by ASHRAE.

2. Testing Conditions

a. This test procedure covers split-type and single-packaged ducted units and split-type non-ducted units. Except for units having a variable-speed compressor, ducted units tested without an indoor fan installed are covered.

b. Only a subset of the sections listed in this test procedure apply when testing and rating a particular unit. Tables 1–A through 1–C show which sections of the test procedure apply to each type of equipment. In each table, look at all four of the Roman—numeral categories to see what test sections apply to your equipment.

1. The first category, Rows I–1 through I–4 of the Tables, pertains to the compressor and indoor fan features of the equipment. After identifying the correct ''I'' row, find the table cells in the same row that list the type of equipment being tested: Air conditioner (AC), heat pump (HP), or heating-only heat pump (HH). Use the test section(s) listed above each noted table cell for testing and rating the unit.

2. The second category, Rows II–1 and II–2, pertains to the presence or absence of ducts. Row II–1 shows the test procedure sections that apply to ducted systems, and Row II–2 shows those that apply to non-ducted systems.

3. The third category is for special features that may be present in the equipment. When testing units that have one or more of the four (special) equipment features described by the Table footnote for Category III, use Row III to find test sections that apply.

4. The fourth category is for the secondary test method to be used. If you know the secondary method for determining the unit's cooling and/or heating capacity, use Row IV to find the appropriate test sections. Otherwise, include all of the test sections referenced by Row IV cell entries—*i.e.,* sections 2.10 to 2.10.3 and 3.11 to 3.11.3—among those sections consulted for testing and rating information.

c. Obtain a complete listing of all pertinent test sections by recording those sections identified from the four categories above.

d. The user should note that, for many sections, only part of a section applies to the unit being tested. In a few cases, the entire section may not apply. For example, Sections 3.4 to 3.5.3 (which describe optional dry coil tests), are not relevant if the allowed default value for the cooling mode cyclic degradation coefficient is used rather than determining it from testing.

Example for Using Tables 1–A to 1–C.

Equipment Description:

A ducted air conditioner having a single-speed compressor, a fixed-speed indoor fan, and a multi-speed outdoor fan.

Secondary Test Method: Refrigerant Enthalpy Method

Step 1. Determine which of four listed Row ''I'' options applies ==> Row I–2
Table 1–A: ''AC'' in Row I–2 is found in the columns for sections 1.1 to 1.47, 2.1 to 2.2, 2.2.4 to 2.2.4.1, 2.2.5, 2.3 to 2.3.1, 2.4 to 2.4.1, 2.5, 2.5.2 to 2.10, and 2.11 to 2.13.
Table 1–B: ''AC'' is listed in Row I–2 for sections 3 to 3.1.4, 3.1.5 to 3.1.8, 3.2.1, 3.3 to 3.5, 3.5.3, 3.11 and 3.12.
Table 1–C: ''AC'' is listed in Row I–2 for sections 4.1.1 and 4.4.

Step 2. Equipment is ducted ==> Row II–1
Table 1–A: ''AC'' is listed in Row II–1 for sections 2.4.2 and 2.5.1 to 2.5.1.2.
Table 1–B: ''AC'' is listed in Row II–1 for sections 3.1.4.1 to 3.1.4.1.1 and 3.5.1.
Table 1–C: no ''AC'' listings in Row II–1.

Step 3. Equipment Special Features include multi-speed outdoor fan ==> Row III, M
Table 1–A: ''M'' is listed in Row III for section 2.2.2
Tables 1–B and 1–C: no ''M'' listings in Row III.

Step 4. Secondary Test Method is Refrigerant Enthalpy Method ==> Row IV, R
Table 1–A: ''R'' is listed in Row IV for section 2.10.3
Table 1–B: ''R'' is listed in Row IV for section 3.11.3
Table 1–C: no ''R'' listings in Row IV.

Step 5. Cumulative listing of applicable test procedure sections

1.1 to 1.47, 2.1 to 2.2, 2.2.2, 2.2.4 to 2.4.1, 2.2.5, 2.3 to 2.3.1, 2.4 to 2.4.1, 2.4.2, 2.5, 2.5.1 to 2.5.1.2, 2.5.2 to 2.10, 2.10.3, 2.11 to 2.13, 3. to 3.1.4, 3.1.4.1 to 3.1.4.1.1, 3.1.5 to 3.1.8, 3.2.1, 3.3 to 3.5, 3.5.1, 3.5.3, 3.11, 3.11.3, 3.12, 4.1.1, and 4.4.

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Table 1A. Selection of Test Procedure Sections: Section 2 (Testing Conditions)

Key Equipment Features and Secondary Test Method \ Sections From the Test Procedure	1.1 to 1.47	2.1 to 2.2	2.2.1	2.2.2	2.2.3	2.2.4 to 2.2.4.1	2.2.4.2	2.2.5	2.3 to 2.3.1	2.3.2	2.4 to 2.4.1	2.4.2	2.5	2.5.1 to 2.5.1.2	2.5.2 to 2.10	2.10.1	2.10.2	2.10.3	2.11 to 2.13
I-1. Single-speed Compressor; Variable-Speed Variable Air Volume Indoor Fan	AC HP HH	AC HP HH	HP HH			AC HP	HP HH	AC HP HH	AC HP	HP HH	AC HP HH		AC HP HH		AC HP HH				AC HP HH
I-2. Single-speed Compressor Except as Covered by "I-1"	AC HP HH	AC HP HH	HP HH			AC HP	HP HH	AC HP HH	AC HP	HP HH	AC HP HH		AC HP HH		AC HP HH				AC HP HH
I-3. Two-capacity Compressor	AC HP HH	AC HP HH	HP HH			AC HP	HP HH	AC HP HH	AC HP	HP HH	AC HP HH		AC HP HH		AC HP HH				AC HP HH
I-4. Variable-speed Compressor	AC HP HH	AC HP HH	HP HH			AC HP	HP HH	AC HP HH	AC HP	HP HH	AC HP HH		AC HP HH		AC HP HH				AC HP HH
II-1. Ducted												AC HP HH		AC HP HH					
II-2. Non-Ducted																			
III. Special Features				M	G														
IV. Secondary Test Method																O	C	R	

Legend for Table Entries:

Categories I and II: AC= applies for an Air Conditioner that meets the corresponding Column 1 "Key Equipment . . ." criterion
HP = applies for a Heat Pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
HH = applies for a Heating-only Heat pump that meets the corresponding Column 1 "Key Equipment . . ." criterion

Category III: G = ganged mini-splits or multi-splits;
H = heat pump with a heat comfort controller;
M = units with a multi-speed outdoor fan;
N = non-defrost heat pump

Category IV: O = Outdoor Air Enthalpy Method; C = Compressor Calibration Method; R = Refrigerant Enthalpy Method

Table 1B. Selection of Test Procedure Sections: Section 3 (Testing Procedures)

Key Equipment Features and Secondary Test Method \ Sections From the Test Procedure	3. to 3.1.4	3.1.4.1 to 3.1.4.1.1	3.1.4.1.2	3.1.4.2	3.1.4.3	3.1.4.4 to 3.1.4.4.2	3.1.4.4.3	3.1.4.4.4	3.1.4.5	3.1.4.6 to 3.1.4.7	3.1.5 to 3.1.8	3.1.9	3.2.1	3.2.2 to 3.2.2.2	3.2.3	3.2.4	3.3 to 3.5	3.5.1	3.5.2	3.5.3	3.6.1	3.6.1.1
I-1. Single-speed Compressor; Variable-speed, Variable Air Volume Indoor Fan	AC HP HH			AC HP					HP HH		AC HP HH	HP HH		AC HP			AC HP			AC HP		
I-2. Single-speed Compressor Except as Covered by "I-1"	AC HP HH										AC HP HH	HP HH	AC HP				AC HP			AC HP	HP HH	
I-3. Two-capacity Compressor	AC HP HH			AC HP					HP HH		AC HP HH	HP HH			AC HP		AC HP			AC HP		
I-4. Variable-speed Compressor	AC HP HH			AC HP	AC HP				HP HH	HP HH	AC HP HH	HP HH				AC HP	AC HP			AC HP		
II-1. Ducted		AC HP				HP	HH											AC HP				
II-2. Non-Ducted			AC HP					HP HH											AC HP			
III. Special Features																						N
IV. Secondary Test Method																						

Legend for Table Entries:

Categories I and II:
- AC = applies for an Air Conditioner that meets the corresponding Column 1 "Key Equipment . . ." criterion
- HP = applies for a Heat Pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
- HH = applies for a Heating-only Heat pump that meets the corresponding Column 1 "Key Equipment . . ." criterion

Category III:
- G = ganged mini-splits or multi-splits;
- H = heat pump with a heat comfort controller;
- M = units with a multi-speed outdoor fan;
- N = non-defrost heat pump

Category IV:
- O = Outdoor Air Enthalpy Method; C = Compressor Calibration Method; R = Refrigerant Enthalpy Method

Table 1B. Selection of Test Procedure Sections: Section 3 (Testing Procedures) (continued)

Key Equipment Features and Secondary Test Method \ Sections From the Test Procedure	3.6.1.2	3.6.2	3.6.3	3.6.4	3.7 to 3.8.1	3.9 to 3.10	3.11	3.11.1 to 3.11.1.3	3.11.2	3.11.3	3.12
I-1. Single-speed Compressor; Variable-speed, Variable Air Volume Indoor Fan		HP HH			HP HH	HP† HH†	AC HP HH				AC HP HH
I-2. Single-speed Compressor Except as Covered by "I-1"					HP HH	HP† HH†	AC HP HH				AC HP HH
I-3. Two-capacity Compressor			HP HH		HP HH	HP† HH†	AC HP HH				AC HP HH
I-4. Variable-speed Compressor				HP HH	HP HH	HP† HH†	AC HP HH				AC HP HH
II-1. Ducted											
II-2. Non-Ducted											
III. Special Features	H										
IV. Secondary Test Method								O	C	R	

Legend for Table Entries:
Categories I and II: AC = applies for an Air Conditioner that meets the corresponding Column 1 "Key Equipment . . ." criterion
HP = applies for a Heat Pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
HH = applies for a Heating-only Heat pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
Category III: G = ganged mini-splits or multi-splits;
H = heat pump with a heat comfort controller;
M = units with a multi-speed outdoor fan;
N = non-defrost heat pump
Category IV: O = Outdoor Air Enthalpy Method; C = Compressor Calibration Method; R = Refrigerant Enthalpy Method
† Does not apply to non-defrost heat pumps

Table 1C. Selection of Test Procedure Sections: Section 4
(Calculations of Seasonal Performance Descriptors)

Key Equipment Features and Secondary Test Method / Sections From the Test Procedure	4 to 4.1	4.1.1	4.1.2 to 4.1.2.2	4.1.3 to 4.1.3.4	4.1.4 to 4.1.4.3	4.2	4.2.1	4.2.1.1	4.2.1.2	4.2.2	4.2.3 to 4.2.3.4	4.2.4 to 4.2.4.3	4.3 to 4.3.2	4.4
I-1. Single-speed Compressor; Variable-speed Variable Air Volume Indoor Fan	AC HP		AC HP			HP HH				HP HH			HP	AC HP HH
I-2. Single-speed Compressor Except as Covered by "I-1"		AC HP				HP HH	HP HH						HP	AC HP HH
I-3. Two-capacity Compressor	AC HP			AC HP		HP HH					HP HH		HP	AC HP HH
I-4. Variable-speed Compressor	AC HP				AC HP	HP HH						HP HH	HP	AC HP HH
II-1. Ducted														
II-2. Non-Ducted														
III. Special Features								N	H					
IV. Secondary Test Method														

Legend for Table Entries:
Categories I and II: AC = applies for an Air Conditioner that meets the corresponding Column 1 "Key Equipment . . ." criterion
HP = applies for a Heat Pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
HH = applies for a Heating-only Heat pump that meets the corresponding Column 1 "Key Equipment . . ." criterion
Category III: G = ganged mini-splits or multi-splits;
H = heat pump with a heat comfort controller;
M = units with a multi-speed outdoor fan;
N = non-defrost heat pump

Inside these test rooms, use artificial loads during cyclic tests and frost accumulation tests, if needed, to produce stabilized room air temperatures. For one room, DOE recommends using an electric resistance heater(s) having a heating capacity that is

approximately equal to the heating capacity of the test unit's condenser. For the second room, DOE recommends using a heater(s) having a capacity that is close to the sensible cooling capacity of the test unit's evaporator. Cycle the heater located in the same room as the test unit evaporator coil ON and OFF when the test unit cycles ON and OFF. Cycle the heater located in the same room as the test unit condensing coil ON and OFF when the test unit cycles OFF and ON.

2.2 *Test unit installation requirements.* a. Install the unit according to Section 8.6 of ASHRAE Standard 37–88. With respect to interconnecting tubing used when testing split systems, however, follow the requirements given in Section 5.1.3.5 of ARI Standard 210/240–94. When testing triple-split systems (see Definition 1.43), use the tubing length specified in Section 5.1.3.5 of ARI Standard 210/240–94 to connect the outdoor coil, indoor compressor section, and indoor coil while still meeting the requirement of exposing 10 feet of the tubing to outside conditions. When testing non-ducted systems having multiple indoor coils, connect each indoor fan-coil to the outdoor unit using: a. 25 feet of tubing, or b. tubing furnished by the manufacturer, whichever is longer. If they are needed to make a secondary measurement of capacity, install refrigerant pressure measuring instruments as described in Section 8.6.5 of ASHRAE Standard 37–88. Refer to Section 2.10 of this Appendix to learn which secondary methods require refrigerant pressure measurements. At a minimum, insulate the low pressure line(s) of a split system with foam insulation having an inside diameter that matches the refrigerant tubing and a nominal thickness of ½ inch.

b. For units designed for both horizontal and vertical installation or for both up-flow and down-flow vertical installations, the manufacturer must specify the orientation used for testing. Conduct testing with the following installed:

(1) The most restrictive filter(s),

(2) Supplementary heating coils, and

(3) Other equipment specified as part of the unit, including all hardware used by a heat comfort controller if so equipped (see Definition 1.26).

c. Testing a ducted unit without having an indoor air filter installed is permissible as long as the minimum external static pressure requirement is adjusted as Table 2, note 3 states (see Section 3.1.4). Except as noted in Section 3.1.9, prevent the indoor air supplementary heating coils from operating during all tests. For coil only indoor units that are supplied without an enclosure, create an enclosure using 1 inch fiberglass ductboard having a nominal density of 6 pounds per cubic foot. Or alternatively, use some other insulating material having a thermal resistance (''R'' value) between 4 and 6 hr·ft^{2}·°F/Btu. For units where the coil is housed within an enclosure or cabinet, no extra insulating or sealing is allowed.

2.2.1 *Defrost control settings.* Set heat pump defrost controls at the normal settings which most typify those encountered in generalized climatic region IV. (Refer to Figure 2 and Table 17 of Section 4.2 for information on region IV.) For heat pumps that use a time-adaptive defrost control system (see Definition 1.41), the manufacturer must specify the frosting interval to be used during Frost Accumulation tests and provide the procedure for manually initiating the defrost at the specified time. To ease testing of any unit, the manufacturer should provide information and any necessary hardware to manually initiate a defrost cycle.

2.2.2 *Special requirements for units having a multiple-speed outdoor fan.* Configure the multiple-speed outdoor fan according to the manufacturer's specifications, and thereafter, leave it unchanged for all tests. The controls of the unit must regulate the operation of the outdoor fan during all lab tests except dry coil cooling mode tests. For dry coil cooling mode tests, the outdoor fan must operate at the same speed as used during the required wet coil test conducted at the same outdoor test conditions.

2.2.3 *Special requirements for multi-split air conditioners and heat pumps, and systems composed of multiple mini-split units (outdoor units located side-by-side) that would normally operate using two or more indoor thermostats.* During the steady-state tests, shunt all thermostats to make all indoor fan-coil units operating simultaneously. To ease the testing burden of cyclic tests, consider creating a single control circuit that allows simultaneous cycling of all compressor systems. In this test procedure, references to a single indoor fan, outdoor fan, and compressor means all indoor fans, all outdoor fans, and all compressor systems.

2.2.4 *Wet-bulb temperature requirements for the air entering the indoor and outdoor coils.*

2.2.4.1 *Cooling mode tests.* For wet-coil cooling mode tests, regulate the water vapor content of the air entering the indoor unit to the applicable wet-bulb temperature listed in Tables 3 to 6. As noted in these same tables, achieve a wet-bulb temperature during dry-coil cooling mode tests that results in no condensate forming on the indoor coil. Controlling the water vapor content of the air entering the outdoor side of the unit is not required for cooling mode tests except when testing:

(1) Units that reject condensate to the outdoor coil during wet coil tests. Tables 3–6 list the applicable wet-bulb temperatures.

(2) Single-packaged units where all or part of the indoor section is located in the outdoor test room. The average dew point temperature of the air entering the outdoor coil during wet coil tests must be within ±3.0 °F of the average dew point temperature of the air entering the indoor coil over the 30-minute data collection interval described in Section 3.3. For dry coil tests on such units, you may need to limit the moisture content of the air entering the outdoor side of the unit to meet the requirements of Section 3.4.

2.2.4.2 *Heating mode tests.* For heating mode tests, regulate the water vapor content of the air entering the outdoor unit to the applicable wet-bulb temperature listed in Tables 9 to 12. The wet-bulb temperature entering the indoor side of the heat pump must not exceed 60 °F. Additionally, if you use the Outdoor Air Enthalpy test method while testing a single-packaged heat pump where all or part of the outdoor section is located in the indoor test room, adjust the wet-bulb temperature for the air entering the indoor side to yield an indoor-side dew point temperature that is as close as reasonably possible to the dew point temperature of the outdoor-side entering air.

2.2.5 *Additional refrigerant charging requirements.* Charging according to the ''manufacturer's instructions,'' as stated in Section 8.6 of ASHRAE Standard 37–88, means the manufacturer's installation instructions that come packaged with the unit. For third party testing, for example, do not consult the manufacturer about how to charge the unit. If a unit requires charging but the installation instructions do not specify a charging procedure, then evacuate the unit and add the nameplate refrigerant charge. Where the manufacturer's installation instructions contain two sets of refrigerant charging criteria, one for field installations and one for lab testing, use the field installation criteria.

2.3 *Indoor air volume rates.* If a unit's controls allow for overspeeding the indoor fan (usually on a temporary basis), take the necessary steps to prevent overspeeding during all tests.

2.3.1 *Cooling tests.* a. Set indoor fan control options (e.g., fan motor pin settings, fan motor speed) according to the published installation instructions that are provided with the equipment while meeting the airflow requirements that are specified in paragraph b. of this section.

b. Express the Cooling Certified Air Volume Rate, the Cooling Minimum Air Volume Rate, and the Cooling Intermediate Air Volume Rate in terms of standard air.

2.3.2 *Heating tests.* a. If needed, set the indoor fan control options (e.g., fan motor pin settings, fan motor speed) according to the published installation instructions that are provided with the equipment. Do this set-up while meeting all applicable airflow requirements that are specified in paragraph b. of this section.

b. Express the Heating Certified Air Volume Rate, the Heating Minimum Air Volume Rate, the Heating Intermediate Air Volume Rate, and the Heating Nominal Air Volume Rate in terms of standard air.

2.4 *Indoor coil inlet and outlet duct connections.* Insulate and/or construct the outlet plenum described in Section 2.4.1 and, if installed, the inlet plenum described in Section 2.4.2 with thermal insulation having a nominal overall resistance (R-value) of at least 19 hr·ft^{2}·°F/Btu.

2.4.1 *Outlet plenum for the indoor coil.* Attach a plenum to the outlet of the indoor coil. (Note: For some packaged systems, the indoor coil may be located in the outdoor test room.) For non-ducted systems having multiple indoor coils, attach a plenum to each indoor coil outlet. Add a static pressure tap to each face of the (each) outlet plenum, if rectangular, or at four evenly distributed locations along the circumference of an oval or round plenum. Create a manifold that connects the four static pressure taps. Figure 1 provides recommended options for the manifold configuration. See Figures 7 and 8 of ASHRAE Standard 37–88 for the cross-

sectional dimensions and minimum length of the (each) plenum and the locations for adding the static pressure taps for units tested with and without an indoor fan installed. For a non-ducted system having multiple indoor coils, have all outlet plenums discharge air into a single common duct. At the plane where each plenum enters the common duct, install an adjustable airflow damper and use it to equalize the static pressure in each plenum.

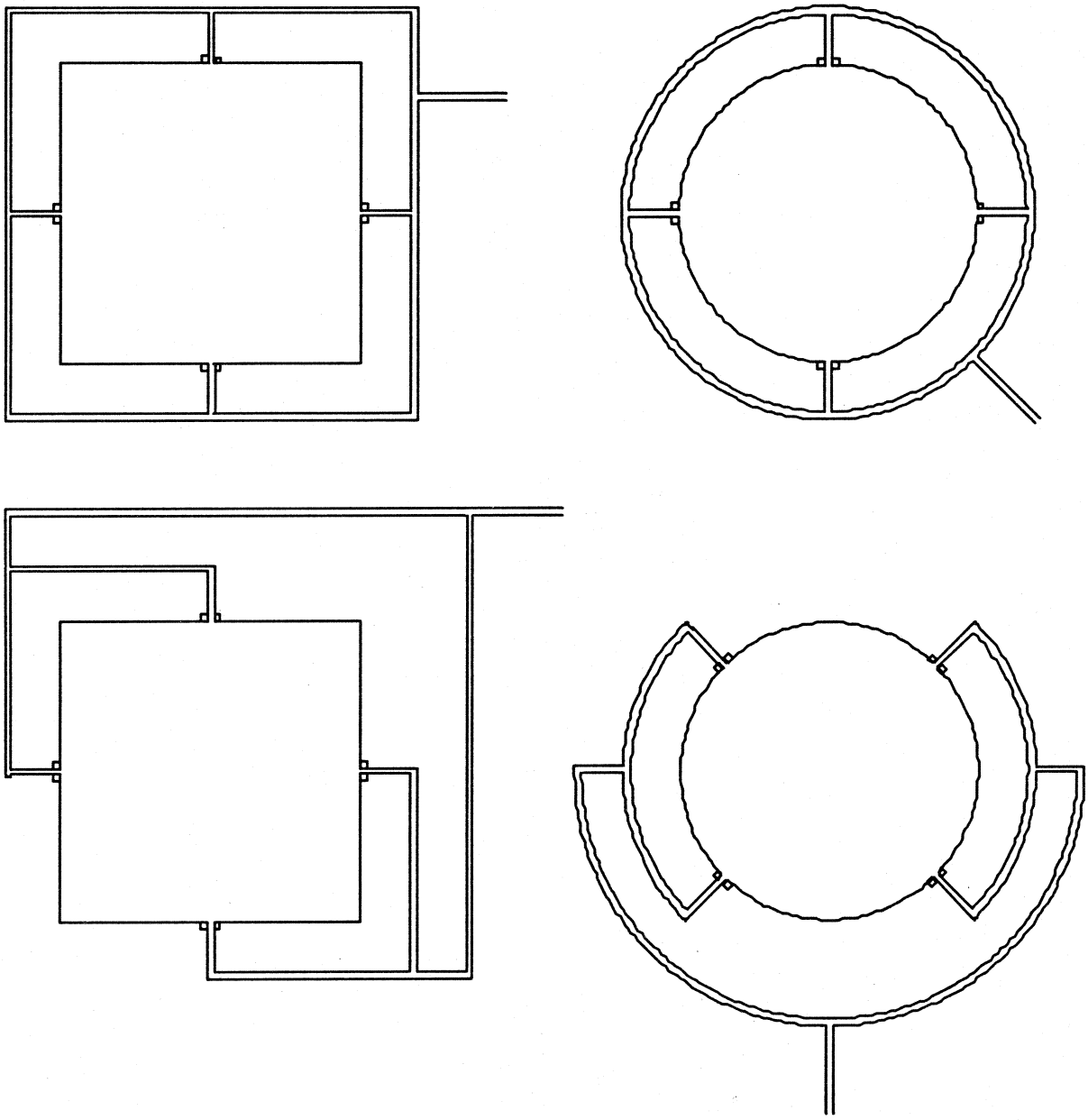

Figure 1. Recommended configuration for manifolding static pressure taps.

2.4.2 *Inlet plenum for the indoor unit.* Install an inlet plenum when testing a coil-only indoor unit or a packaged system where the indoor coil is located in the outdoor test room. Add static pressure taps at the center of each face of this plenum, if rectangular, or at four evenly distributed locations along the circumference of an oval or round plenum. Make a manifold that connects the four static pressure taps. See Figure 8 of ASHRAE Standard 37–88 for cross-sectional dimensions, the minimum length of the inlet plenum, and the locations of the static pressure taps. When testing a ducted unit having an indoor fan (and the indoor coil is in the indoor test room), DOE recommends installing an inlet plenum if sufficient space exists within the test room. If using an inlet plenum, add four static pressure taps and a manifold that connects them together. DOE recommends constructing the inlet plenum and locating the static pressure taps as shown in Figure 8 of ASHRAE Standard 37–88. Never use an inlet plenum when testing a non-ducted system.

2.5 *Indoor coil air property measurements and air damper box applications.* a. Measure the dry-bulb temperature and water vapor content of the air entering and leaving the indoor coil. If needed, use an air sampling device to divert air to a sensor(s) that measures the water vapor content of the air. See Figure 2 of ASHRAE Standard 41.1–86 (RA 91) for guidance on constructing an air sampling device. The sampling device may also divert air to a remotely located sensor(s) that measures dry bulb temperature. You may use the air sampling device and the remotely located temperature sensor(s) to determine the entering air dry bulb temperature during any test. You may use the air sampling device and the remotely located leaving air dry bulb temperature sensor(s) for all tests except:

(1) Cyclic tests, and

(2) Frost Accumulation tests.

b. An acceptable alternative in all cases, including the two special cases noted above, is to install a grid of dry bulb temperature sensors within the outlet and inlet ducts. Use a temperature grid to get the average dry bulb temperature at one location, leaving or entering, or when two grids are applied as a thermopile, to directly obtain the temperature difference. A grid of temperature sensors (which may also be used for determining average leaving air dry bulb temperature) is required to measure the temperature distribution within a cross-section of the leaving airstream.

c. Use an inlet and outlet air damper box when testing ducted systems if conducting one or both of the cyclic tests listed in Sections 3.2 and 3.6 . Otherwise, DOE recommends installing an outlet air damper box when testing heat pumps, both ducted and non-ducted, that cycle off the indoor fan during defrost cycles. Never use an inlet damper box when testing a non-ducted system.

2.5.1 *Test set-up on the inlet side of the indoor coil: for cases where the inlet damper box is installed.* a: Install the inlet side damper box as specified in Section 2.5.1.1 or 2.5.1.2, whichever applies. Insulate or construct the ductwork between the point where the air damper is installed and where the connection is made to the following:

(1) The inlet plenum (Section 2.5.1.1 units); or

(2) To the indoor unit (Section 2.5.1.2 units) with thermal insulation that has a nominal overall resistance (R-value) of at least 19 hr·ft^{2}·°F/Btu.

b. Locate the grid of entering air dry-bulb temperature sensors, if used, at the inlet of the damper box. Locate the air sampling device, or the sensor used to measure the water vapor content of the inlet air, at a location immediately upstream of the damper box inlet.

2.5.1.1 *If the Section 2.4.2 inlet plenum is installed.* Install the inlet damper box upstream of the inlet plenum. The cross-sectional flow area of the damper box must be equal to or greater than the flow area of the inlet plenum. If needed, use an adaptor plate or a transition duct section to connect the damper box with the inlet plenum.

2.5.1.2 *If the Section 2.4.2 inlet plenum is not installed.* Install the damper box immediately upstream of the air inlet of the indoor unit. The cross-sectional dimensions of the damper box must be equal to or greater than the dimensions of the indoor unit inlet. If needed, use an adaptor plate or a short transition duct section to connect the damper box with the unit's air inlet. Add static pressure taps at the center of each face of the damper box, if rectangular, or at four evenly distributed locations along the circumference, if oval or round. Locate the pressure taps between the inlet damper and the inlet of the indoor unit. Make a manifold that connects the four static pressure taps.

2.5.2 *Test set-up on the inlet side of the indoor unit: for cases where no inlet damper box is installed.* If using the Section 2.4.2 inlet plenum and a grid of dry bulb temperature sensors, mount the grid at a location upstream of the static pressure taps described in Section 2.4.2, preferably at the entrance plane of the inlet plenum. If you do not use the Section 2.4.2 inlet plenum, but you are using a grid of dry bulb temperature sensors, locate the grid approximately 6 inches from the inlet of the indoor coil. Or, in the case of non-ducted units having multiple indoor coils, locate a grid approximately 6 inches from the inlet of each indoor coil. Position an air sampling device, or the sensor used to measure the water vapor content of the inlet air, immediately upstream of the (each) entering air dry-bulb temperature sensor grid. If you are not using a grid of sensors, position the entering air sampling device (or the sensor used to measure the water vapor content of the inlet air) as if the grid were present.

2.5.3 *Indoor coil static pressure difference measurement.* Section 6.4.4.1 of ASHRAE Standard 37–88 describes the recommended method for fabricating static pressure taps. Also refer to Figure 2A of ASHRAE Standard 51–99. Use a differential pressure measuring instrument that is accurate to within ±0.01 inches of water and has a resolution of at least 0.01 inches of water to measure the static pressure difference between the indoor coil air inlet and outlet. Connect one side of the differential pressure instrument to the manifolded pressure taps installed in the outlet plenum. Connect the other side of the instrument to the manifolded pressure taps located in either the inlet plenum or incorporated within the air damper box. If you are not using an inlet plenum or inlet damper box, leave the inlet side of the differential pressure instrument open to the surrounding atmosphere. For non-ducted systems that are tested with multiple outlet plenums, measure the static pressure within each outlet plenum relative to the surrounding atmosphere.

2.5.4 *Test set-up on the outlet side of the indoor coil.* a: Install an interconnecting duct between the outlet plenum described in Section 2.4.1 and the airflow measuring apparatus described below in Section 2.6. The cross-sectional flow area of the interconnecting duct must be equal to or greater than the flow area of the outlet plenum or the common duct used when testing non-ducted units having multiple indoor coils. If needed, use adaptor plates or transition duct sections to allow the connections. DOE recommends taping joints within the interconnecting duct (and the outlet plenum). Construct or insulate the entire flow section with thermal insulation having a nominal overall resistance (R-value) of at least 19 hr·ft^{2}·°F/Btu.

b. Install a grid(s) of dry-bulb temperature sensors inside the interconnecting duct. Also, install an air sampling device, or the sensor(s) used to measure the water vapor content of the outlet air, inside the interconnecting duct. Locate the dry-bulb temperature grid(s) upstream of the air sampling device [or the in-duct sensor(s) used to measure the water vapor content of the outlet air]. Air that circulates through an air sampling device and passed a remote water-vapor-content sensor(s) must be returned to the interconnecting duct at a point:

(1) Downstream of the air sampling device,

(2) Upstream of the outlet air damper box, if installed, and

(3) Upstream of the Section 2.6 airflow measuring apparatus.

2.5.4.1 *Outlet air damper box placement and requirements.* If using an outlet air damper box (see Section 2.5), install it within the interconnecting duct at a location downstream of the location where air from the sampling device is reintroduced or downstream of the in-duct sensor that measures water vapor content of the outlet air. The leakage rate from the combination of the outlet plenum, the closed damper, and the duct section that connects these two components must not exceed 20 cubic feet per minute when a negative pressure of 1 inch of water column is maintained at the plenum's inlet.

2.5.4.2 *Additional recommendations.* DOE recommends installing a mixing device(s) upstream of the outlet air, dry-bulb temperature grid (but downstream of the outlet plenum static pressure taps). Also, consider using a perforated screen located between the mixing device and the dry-bulb temperature grid. DOE recommends using a screen having a maximum open area of 40 percent. One or both items should help to

meet the maximum outlet air temperature distribution specified in Section 3.1.8. Mixing devices are described in Sections 6.3—6.5 of ASHRAE Standard 41.1–86 (RA 91) and Section 5.2.2 of ASHRAE Standard 41.2–87 (RA 92).

2.5.5 *Dry bulb temperature measurement.* a. Measure dry bulb temperatures as specified in Sections 4, 5, 6.1–6.10, 9, 10, and 11 of ASHRAE Standard 41.1–86 (RA 91). The transient testing requirements cited in Section 4.3 of ASHRAE Standard 41.1–86 (RA 91) apply if conducting a cyclic or Frost Accumulation test.

b. Distribute the sensors of a dry-bulb temperature grid over the entire flow area. DOE recommends using 16 temperature sensors within each temperature grid. The required minimum is 9 sensors per grid. DOE recommends installing redundant inlet and outlet dry bulb temperature sensors and particularly a thermopile. If using thermocouples, DOE recommends the following:

(1) Use 24 gauge wire,

(2) Remove approximately 1 inch of insulation from each lead when preparing to make a junction, and

(3) Use no more than two bonded turns per junction.

2.5.6 *Water vapor content measurement.* Determine water vapor content by measuring dry-bulb temperature combined with the air wet-bulb temperature, dew point temperature, or relative humidity. If used, construct and apply wet-bulb temperature sensors as specified in Sections 4, 5, 6, 9, 10, and 11 of ASHRAE Standard 41.1–86 (RA 91). As specified in ASHRAE Standard 41.1, the temperature sensor (wick removed) must be accurate to within ±0.2 °F. If used, apply dew point hygrometers as specified in Sections 5 and 8 of ASHRAE Standard 41.6–94. The dew point hygrometers must be accurate to within ±0.4 °F when operated at conditions that result in the evaluation of dew points above 35 °F. If used, a relative humidity meter must be accurate to within ±0.7% RH. Other means to determine the psychrometric state of air may be used as long as the measurement accuracy is equivalent or better than the accuracy achieved from using a wet-bulb temperature sensor that meets the above specifications.

2.5.7 *Air damper box performance requirements.* If used (see Section 2.5), the air damper box(es) must be capable of being completely opened or completely closed within 10 seconds for each action.

2.6 *Airflow measuring apparatus.* a. Fabricate and operate an Air Flow Measuring Apparatus as specified in Section 6.6 of ASHRAE Standard 116–95. Refer to Figure 12 of ASHRAE Standard 51–99 or Figure 14 of ASHRAE Standard 41.2–87 (RA 92) for guidance on placing the static pressure taps and positioning the diffusion baffle (settling means) relative to the chamber inlet.

b. Connect the airflow measuring apparatus to the interconnecting duct section described in Section 2.5.4. See Sections 6.1.1, 6.1.2, and 6.1.4, and Figures 1, 2, and 4 of ASHRAE Standard 37–88, and Figures B1, B2, and B4 of ARI Standard 210/240–94 for illustrative examples of how the test apparatus may be applied within a complete laboratory set-up. Instead of following one of these examples, you may use an alternative set-up to handle the air leaving the airflow measuring apparatus and to supply properly conditioned air to the test unit's inlet. The alternative set-up, however, must not interfere with the prescribed means for measuring airflow rate, inlet and outlet air temperatures, inlet and outlet water vapor contents, and external static pressures, nor create abnormal conditions surrounding the test unit. (Note: do not use an enclosure as described in Section 6.1.3 of ASHRAE Standard 37–88 when testing triple-split units.)

2.7 *Electrical voltage supply.* Perform all tests at the voltage specified in Section 5.1.3.2 of ARI Standard 210/240–94 for ''Standard Rating Tests.'' Measure the supply voltage at the terminals on the test unit using a volt meter that provides a reading that is accurate to within ±1.0 percent of the measured quantity.

2.8 *Electrical power and energy measurements.* a. Use an integrating power (watt-hour) measuring system to determine the electrical energy or average electrical power supplied to all components of the air conditioner or heat pump (including auxiliary components such as controls, transformers, crankcase heater, integral condensate pump on non-ducted indoor units, etc.). The watt-hour measuring system must give readings that are accurate to within ±0.5 percent. For cyclic tests, this accuracy is required during both the ON and OFF cycles. Use either two different scales on the same watt-hour meter or two separate watt-hour meters. Activate the scale or meter having the lower power rating within 15 seconds after beginning an OFF cycle. Activate the scale or meter having the higher power rating active within 15 seconds prior to beginning an ON cycle. For ducted units tested with a fan installed, the ON cycle lasts from compressor ON to indoor fan OFF. For ducted units tested without an indoor fan installed, the ON cycle lasts from compressor ON to compressor OFF. For non-ducted units, the ON cycle lasts from indoor fan ON to indoor fan OFF. When testing air conditioners and heat pumps having a variable-speed compressor, avoid using an induction watt/watt-hour meter. Instead, consider using a watt-hour measuring system that is capable of measuring up to the 50th harmonic.

b. When performing Section 3.5 and/or 3.8 cyclic tests on non-ducted units, provide instrumentation to determine the average electrical power consumption of the indoor fan motor to within ±1.0 percent. If required according to Sections 3.3, 3.4, 3.7, 3.9.1, and/or 3.10, this same instrumentation requirement applies when testing air conditioners and heat pumps having a variable-speed constant-air-volume-rate indoor fan or a variable-speed, variable-air-volume-rate indoor fan.

2.9 *Time measurements.* Make elapsed time measurements using an instrument that yields readings accurate to within ±0.2 percent.

2.10 *Test apparatus for the secondary space conditioning capacity measurement.* For all tests, use the Indoor Air Enthalpy Method to measure the unit's capacity. This method uses the test set-up specified in Sections 2.4 to 2.6. For all steady-state tests, in addition, conduct a second, independent measurement of capacity. For split systems, use one of the following secondary measurement methods: Outdoor Air Enthalpy Method, Compressor Calibration Method, or Refrigerant Enthalpy Method. Use either the Outdoor Air Enthalpy Method or the Compressor Calibration Method as the secondary measurement when testing a single packaged unit.

2.10.1 *Outdoor Air Enthalpy Method.* a. To make a secondary measurement of indoor space conditioning capacity using the Outdoor Air Enthalpy Method, do the following:

(1) Measure the electrical power consumption of the test unit,

(2) Measure the air-side capacity at the outdoor coil, and

(3) Apply a heat balance on the refrigerant cycle.

b. The test apparatus required for the Outdoor Air Enthalpy Method is a subset of the apparatus used for the Indoor Air Enthalpy Method. Required apparatus includes the following:

(1) An outlet plenum containing static pressure taps (Sections 2.4, 2.4.1, and 2.5.3),

(2) An airflow measuring apparatus (Section 2.6),

(3) A duct section that connects these two components and itself contains the instrumentation for measuring the dry-bulb temperature and water vapor content of the air leaving the outdoor coil (Sections 2.5.4, 2.5.5, and 2.5.6), and

(4) On the inlet side, a sampling device and optional temperature grid (Sections 2.5 and 2.5.2).

c. During the preliminary tests described in Sections 3.11.1 and 3.11.1.1, measure the evaporator and condenser temperatures or pressures. On both the outdoor coil and the indoor coil, solder a thermocouple onto a return bend located at or near the midpoint of each coil or at points not affected by vapor superheat or liquid subcooling. Alternatively, if the test unit is not sensitive to the refrigerant charge, connect pressure gages to the access valves or to ports created from tapping into the suction and discharge lines. Use this alternative approach when testing a unit charged with a zeotropic refrigerant having a temperature glide in excess of 1°F at the specified test conditions.

2.10.2 *Compressor Calibration Method.* Measure refrigerant pressures and temperatures to determine the evaporator superheat and the enthalpy of the refrigerant that enters and exits the indoor coil. Determine refrigerant flow rate or, when the superheat of the refrigerant leaving the evaporator is less that 5 °F, total capacity from separate calibration tests conducted under identical operating conditions. Install instrumentation; measure refrigerant properties; adjust the refrigerant charge according to Section 7.4.2 of ASHRAE Standard 37–88. Use refrigerant temperature and pressure measuring instruments that meet the specifications given in Sections 5.1.1 and 5.2 of ASHRAE Standard 37–88.

2.10.3 *Refrigerant Enthalpy Method.* For this method, calculate space conditioning

capacity by determining the refrigerant enthalpy change for the indoor coil and directly measuring the refrigerant flow rate. Refer to Section 7.6.2 of ASHRAE Standard 37–88 for the requirements for using the method, the additional instrumentation requirements, and information on placing the flow meter and a sight glass. Use refrigerant temperature, pressure, and flow measuring instruments that meet the specifications given in Sections 5.1.1, 5.2, and 5.5.1 of ASHRAE Standard 37–88.

2.11 *Measurement of test room ambient conditions.* a. If using a test set-up where air is ducted directly from the conditioning apparatus to the indoor coil inlet (see Figure 2, Loop Air-Enthalpy Test Method Arrangement, of ASHRAE Standard 37–88), add instrumentation to permit measurement of the indoor test room dry-bulb temperature.

b. If you are not using the Outdoor Air Enthalpy Method, add instrumentation to measure the dry-bulb temperature and the water vapor content of the air entering the outdoor coil. DOE recommends measuring water vapor content by using an air sampling device to divert air to a remotely located sensor(s). If used, construct and apply the air sampling device as per Section 6 of ASHRAE Standard 41.1–86 (RA 91). You may use the air sampling device to also divert air to a sensor that measures outdoor-side entering dry bulb temperature. However, DOE recommends positioning dry bulb temperature sensors around the exterior of the entire outdoor coil and using them to determine an average entering dry bulb temperature. In such cases, use individually monitored sensors to identify any significant temperature distribution. Take steps (e.g., add or re-position a lab circulating fan), as needed, to minimize the magnitude of the temperature distribution. Position any fan in the outdoor test room while trying to keep air velocities in the vicinity of the test unit below 500 feet per minute.

c. Measure dry bulb temperatures as specified in Sections 4, 5, 6.1–6.10, 9, 10, and 11 of ASHRAE Standard 41.1–86 (RA 91). Measure water vapor content as stated above in Section 2.5.6.

2.12 *Measurement of indoor fan speed.* When required, measure fan speed using a revolution counter, tachometer, or stroboscope that gives readings accurate to within ±1.0 percent.

2.13 *Measurement of barometric pressure.* Determine the average barometric pressure during each test. Use an instrument that meets the requirements specified in Section 5.2 of ASHRAE Standard 37–88.

3. Testing Procedures

3.1 *General Requirements.* If during the testing process you make an equipment set-up adjustment that would alter the performance of the unit when conducting an already completed test, then repeat all tests affected by the adjustment. For cyclic tests, instead of maintaining an air volume rate, maintain the airflow nozzle(s)' static pressure difference or velocity pressure during an ON period at the same pressure difference or velocity pressure as measured during the steady-state test conducted at the same test conditions.

3.1.1 Primary and secondary test methods. For all tests, use the Indoor Air Enthalpy Method test apparatus to determine the test unit's space conditioning capacity. The procedure and data collected, however, differ slightly depending upon whether the test is a steady-state test, a cyclic test, or a Frost Accumulation test. The following sections described these differences. For all steady-state tests (i.e., the A, A_2, A_1, B, B_2, B_1, C, C_1, E_V, F_1, G_1, H0, $H0_1$, H1, $H1_2$, $H1_1$, HI_N, H3, $H3_2$, and $H3_1$ Tests), in addition, use one of the acceptable secondary methods specified in Section 2.10 to determine indoor space conditioning capacity. Calculate this secondary check of capacity according to Section 3.11. The two capacity measurements must agree to within 6 percent to constitute a valid test. For this capacity comparison, use the Indoor Air Enthalpy Method capacity that is calculated in Section 7.3 of ASHRAE Standard 37–88 (and do not make the after-test fan heat adjustments described in Sections 3.3, 3.4, 3.7, and 3.10 of this Appendix). However, include the appropriate Section 3.3 to 3.5 and 3.7 to 3.10 fan heat adjustments within the Indoor Air Enthalpy Method capacities used for the Section 4 seasonal calculations.

3.1.2 *Manufacturer-provided equipment overrides.* Where needed, the manufacturer must provide a means for overriding the controls of the test unit so that the compressor(s) operates at the specified speed or capacity and the indoor fan operates at the specified speed or delivers the specified air volume rate.

3.1.3 *Airflow through the outdoor coil.* For all tests, meet the requirements given in Section 5.1.3.4 of ARI Standard 210/240–94 when obtaining the airflow through the outdoor coil.

3.1.4 *Airflow through the indoor coil.*

3.1.4.1 *Cooling Certified Air Volume Rate.*

3.1.4.1.1 Cooling Certified Air Volume Rate for Ducted Units. The manufacturer must specify the Cooling Certified Air Volume Rate. Use this value as long as the following two requirements are satisfied. First, when conducting the A or A_2 Test (exclusively), the measured air volume rate, when divided by the measured indoor air-side total cooling capacity, must not exceed 37.5 cubic feet per minute of standard air (SCFM) per 1000 Btu/h. If this ratio is exceeded, reduce the air volume rate until this ratio is equaled. Use this reduced air volume rate for all tests that call for using the Cooling Certified Air Volume Rate. The second requirement is as follows:

a. For ducted units that are tested with a fixed-speed, multi-speed, or variable-speed variable-air-volume-rate indoor fan installed. For the A or A_2 Test (exclusively), the measured external static pressure must be equal to or greater than the applicable minimum external static pressure cited in Table 2. If the Table 2 minimum is not equaled or exceeded, incrementally change the set-up of the indoor fan (e.g., fan motor pin settings, fan motor speed) until the Table 2 requirement is met while maintaining the same air volume rate. If the indoor fan set-up changes cannot provide the minimum external static, then reduce the air volume rate until the correct Table 2 minimum is equaled. For the last scenario, use the reduced air volume rate for all tests that require the Cooling Certified Air Volume Rate.

b. For ducted units that are tested with a constant-air-volume-rate indoor fan installed. For all tests that specify the Cooling Certified Air Volume Rate, obtain an external static pressure as close to (but not less than) the applicable Table 2 value that does not cause instability or an automatic shutdown of the indoor blower. For the A or A_2 Test (exclusively), the average air volume rate from the 30-minute data collection interval (see Section 3.3) and the manufacturer-provided Cooling Certified Air Volume Rate must differ by 8 percent or less.

c. For ducted units that are tested without an indoor fan installed. For the A or A_2 Test, (exclusively), the pressure drop across the indoor coil assembly must not exceed a specified maximum. The maximum value is 0.30 inches of water for all units except small-duct, high-velocity systems (see 1.46) for which the limit is 0.50 inches of water. If the maximum value is exceeded, reduce the air volume rate until the measured pressure drop equals the specified maximum. Use this reduced air volume rate for all tests that require the Cooling Certified Air Volume Rate.

TABLE 2.—MINIMUM EXTERNAL STATIC PRESSURE FOR DUCTED SYSTEMS TESTED WITH AN INDOOR FAN INSTALLED

Rated cooling [1] or heating [2] capacity (Btu/h)	Minimum external resistance [3] (inches of water)
Up Thru 28,800	0.10
29,000 to 42,500	0.15
43,000 and Above	0.20

[1] For air conditioners and heat pumps, the value cited by the manufacturer in published literature for the unit's capacity when operated at the A or A_2 Test conditions.

[2] For heating-only heat pumps, the value the manufacturer cites in published literature for the unit's capacity when operated at the H1 or $H1_2$ Test conditions.

[3] For ducted units tested without an air filter installed, increase the applicable tabular value by 0.08 inches of water.

3.1.4.1.2 Cooling Certified Air Volume Rate for Non-ducted Units. For non-ducted units, the Cooling Certified Air Volume Rate is the air volume rate that results during each test when the unit is operated at an external static pressure of zero inches of water.

3.1.4.2 Cooling Minimum Air Volume Rate. a. For ducted units that regulate the speed (as opposed to the CFM) of the indoor fan,

$$\text{Cooling Minimum Air Vol. Rate} = \text{Cooling Certified Air Vol. Rate} \cdot \frac{\text{Cooling Minimum Fan Speed}}{A_2 \text{ Test Fan Speed}},$$

where ''Cooling Minimum Fan Speed'' corresponds to the fan speed used when operating at low compressor capacity (two-capacity system), the fan speed used when operating at the minimum compressor speed (variable-speed system), or the lowest fan speed used when cooling (single-speed compressor and a variable-speed variable-air-volume-rate indoor fan). For such systems, obtain the Cooling Minimum Air Volume Rate regardless of the external static pressure.

b. For ducted units that regulate the air volume rate provided by the indoor fan, the manufacturer must specify the Cooling Minimum Air Volume Rate. For such systems, conduct all tests that specify the Cooling Minimum Air Volume Rate—the A_1, B_1, C_1, F_1, and G_1 Tests—at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$A_1, B_1, C_1, F_1, \& G_1 \text{ Test } \Delta P_{st} = \Delta P_{st,A_2} \cdot \left[\frac{\text{Cooling Minimum Air Volume Rate}}{\text{Cooling Certified Air Volume Rate}}\right]^2,$$

where $\Delta P_{st, A2}$ is the applicable Table 2 minimum external static pressure that was targeted during the A_2 (and B_2) Test. Only for the first test, the average measured air volume rate and the manufacturer-specified Cooling Minimum Air Volume Rate must differ by 8 percent or less.

c. For ducted two-capacity units that are tested without an indoor fan installed, the Cooling Minimum Air Volume Rate is the higher of the rate specified by the manufacturer or 75 percent of the Cooling Certified Air Volume Rate. During the laboratory tests on a coil-only (fanless) unit, obtain this Cooling Minimum Air Volume Rate regardless of the pressure drop across the indoor coil assembly.

d. For non-ducted units, the Cooling Minimum Air Volume Rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water and at the indoor fan setting used at low compressor capacity (two-capacity system) or minimum compressor speed (variable-speed system). For units having a single-speed compressor and a variable-speed variable-air-volume-rate indoor fan, use the lowest fan setting allowed for cooling.

3.1.4.3 Cooling Intermediate Air Volume Rate. a. For ducted units that regulate the speed of the indoor fan,

$$\text{Cooling Intermediate Air Volume Rate} = \text{Cooling Certified Air Volume Rate} \cdot \frac{E_V \text{ Test Fan Speed}}{A_2 \text{ Test Fan Speed}}.$$

b. For such units, obtain the Cooling Intermediate Air Volume Rate regardless of the external static pressure.

c. For ducted units that regulate the air volume rate provided by the indoor fan, the manufacturer must specify the Cooling Intermediate Air Volume Rate. For such systems, conduct the E_V Test at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$E_V \text{ Test } \Delta P_{st} = \Delta P_{st,A_2} \cdot \left[\frac{\text{Cooling Intermediate Air Volume Rate}}{\text{Cooling Certified Air Volume Rate}}\right]^2,$$

where $\Delta P_{st, A2}$ is the applicable Table 2 minimum external static pressure that was targeted during the A_2 (and B_2) Test.

d. For non-ducted units, the Cooling Intermediate Air Volume Rate is the air volume rate that results when the unit operates at an external static pressure of zero inches of water and at the fan speed selected by the controls of the unit for the E_V Test conditions.

3.1.4.4 Heating Certified Air Volume Rate.

3.1.4.4.1 Ducted heat pumps where the Heating and Cooling Certified Air Volume Rates are the same.

a. Use the Cooling Certified Air Volume Rate as the Heating Certified Air Volume Rate for:

1. Ducted heat pumps that operate at the same indoor fan speed during both the A (or A_2) and the H1 (or $H1_2$) Tests,

2. Ducted heat pumps that regulate fan speed to deliver the same constant air volume rate during both the A (or A_2) and the H1 (or $H1_2$) Tests, and

3. Ducted heat pumps that are tested without an indoor fan installed (except two-capacity heat pumps that lock out high capacity cooling—see 3.1.4.4.2).

b. For heat pumps that meet the above criteria ''1'' and ''3,'' no minimum requirements apply to the measured external or internal, respectively, static pressure. For heat pumps that meet the above criterion ''2,'' test at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than, the same Table 2 minimum external static pressure as was specified for the A (or A_2) cooling mode test.

3.1.4.4.2 Ducted heat pumps where the Heating and Cooling Certified Air Volume Rates are different due to indoor fan operation.

a. For ducted heat pumps that regulate the speed (as opposed to the CFM) of the indoor fan,

$$\text{Heating Certified Air Volume Rate} = \text{Cooling Certified Air Volume Rate} \cdot \frac{\text{H1 or H1}_2 \text{ Test Fan Speed}}{\text{A or A}_2 \text{ Test Fan Speed}}.$$

b. For such heat pumps, obtain the Heating Certified Air Volume Rate without regard to the external static pressure.

c. For ducted heat pumps that regulate the air volume rate delivered by the indoor fan, the manufacturer must specify the Heating Certified Air Volume Rate. For such heat pumps, conduct all tests that specify the Heating Certified Air Volume Rate at an

external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$\text{Heating Certified } \Delta P_{st} = \text{Cooling Certified } \Delta P_{st} \cdot \left[\frac{\text{Heating Certified Air Volume Rate}}{\text{Cooling Certified Air Volume Rate}}\right]^2,$$

where the Cooling Certified ΔP_{st} is the applicable Table 2 minimum external static pressure that was specified for the A or A_2 Test. For the first test that uses the Heating Certified Air Volume Rate, the average measured air volume rate and the manufacturer-specified Heating Certified Air Volume Rate, both expressed in SCFM, must differ by 8 percent or less.

d. When testing ducted, two-capacity heat pumps that lock out high capacity operation when cooling, use the appropriate approach of the above two cases for units that are tested with an indoor fan installed. For coil-only (fanless) heat pumps that lock out high capacity cooling, the Heating Certified Air Volume Rate is the lesser of the rate specified by the manufacturer or 133 percent of the Cooling Certified Air Volume Rate. For this latter case, obtain the Heating Certified Air Volume Rate regardless of the pressure drop across the indoor coil assembly.

3.1.4.4.3 *Ducted heating-only heat pumps.* This section applies when testing ducted two-capacity heat pumps that lock out high capacity operation when cooling. The manufacturer must specify the Heating Certified Air Volume Rate. Use this value when the following two requirements are satisfied. First, when conducting the H1 or $H1_2$ Test (exclusively), the measured air volume rate, when divided by the measured indoor air-side total heating capacity, must not exceed 37.5 cubic feet per minute of standard air (SCFM) per 1000 Btu/h. If this ratio is exceeded, reduce the air volume rate until this ratio is equaled. Use this reduced air volume rate for all tests of heating-only heat pumps that call for the Heating Certified Air Volume Rate. The second requirement is as follows:

a. *For heating-only heat pumps that are tested with a fixed-speed, multi-speed, or variable-speed variable-air-volume-rate indoor fan installed.* For the H1 or $H1_2$ Test (exclusively), the measured external static pressure must be equal to or greater than the Table 2 minimum external static pressure that applies given the heating-only heat pump's rated heating capacity. If the Table 2 minimum is not equaled or exceeded, incrementally change the set-up of the indoor fan until the Table 2 requirement is met while maintaining the same air volume rate. If the indoor fan set-up changes cannot provide the necessary external static, then reduce the air volume rate until the correct Table 2 minimum is equaled. For the last scenario, use the reduced air volume rate for all tests that require the Heating Certified Air Volume Rate.

b. *For ducted heating-only heat pumps having a constant-air-volume-rate indoor fan.* For all tests that specify the Heating Certified Air Volume Rate, obtain an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than, the applicable Table 2 minimum. For the H1 or $H1_2$ Test (exclusively), the average air volume rate from the 30-minute data collection interval (see Section 3.7) and the manufacturer-provided Heating Certified Air Volume Rate must differ by 8 percent or less.

c. *For ducted heating-only heat pumps that are tested without an indoor fan installed.* For the H1 or $H1_2$ Test, (exclusively), the pressure drop across the indoor coil assembly must not exceed a specified maximum. The maximum value is 0.30 inches of water for all units except small-duct, high-velocity systems (see 1.46) for which the limit is 0.50 inches of water. If the maximum value is exceeded, reduce the air volume rate until the measured pressure drop equals the specified maximum. Use this reduced air volume rate for all tests that require the Heating Certified Air Volume Rate.

3.1.4.4.4 *Non-ducted heat pumps, including non-ducted heating-only heat pumps.* For non-ducted heat pumps, the Heating Certified Air Volume Rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water.

3.1.4.5 *Heating Minimum Air Volume Rate.* a. For ducted heat pumps that regulate the speed (as opposed to the CFM) of the indoor fan,

$$\text{Heating Minimum Air Volume Rate} = \text{Heating Certified Air Volume Rate} \cdot \frac{\text{Heating Minimum Fan Speed}}{\text{H1}_2\text{ Test Fan Speed}},$$

where ''Heating Minimum Fan Speed'' corresponds to the fan speed used when operating at low compressor capacity (two-capacity system), the lowest fan speed used at any time when operating at the minimum compressor speed (variable-speed system), or the lowest fan speed used when heating (single-speed compressor and a variable-speed variable-air-volume-rate indoor fan). For such heat pumps, obtain the Heating Minimum Air Volume Rate without regard to the external static pressure.

b. For ducted heat pumps that regulate the air volume rate delivered by the indoor fan, the manufacturer must specify the Heating Minimum Air Volume Rate. For such heat pumps, conduct all tests that specify the Heating Minimum Air Volume Rate—the $H0_1$, $H1_1$, $H2_1$, and $H3_1$, at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$H0_1,\ H1_1,\ H2_1,\ \&\ H3_1\ \text{Test}\ \Delta P_{st} = \Delta P_{st,H1_2} \cdot \left[\frac{\text{Htg Minimum Air Vol. Rate}}{\text{Htg Certified Air Vol. Rate}}\right]^2,$$

where is $\Delta P_{st,H1_2}$ is the minimum external static pressure that was targeted during the $H1_2$ Test. Only for the first test, the average measured air volume rate and the manufacturer-specified Heating Minimum Air Volume Rate must differ by 8 percent or less.

c. When testing ducted, two-capacity heat pumps that lock out high capacity operation when cooling, use the appropriate approach of the above two cases for units that are tested with a indoor fan installed.

d. For ducted two-capacity heat pumps that are tested without an indoor fan installed, use the Cooling Minimum Air Volume Rate as the Heating Minimum Air Volume Rate. For ducted two-capacity heat pumps that are tested without an indoor fan installed, and that lock out high capacity operation when cooling, use the Cooling Certified Air Volume Rate as the Heating Minimum Air Volume Rate. For ducted two-capacity heating-only heat pumps that are tested without an indoor fan installed, the Heating Minimum Air Volume Rate is the higher of the rate specified by the manufacturer or 75 percent of the Heating Certified Air Volume Rate. During the laboratory tests on a coil-only (fanless) unit, obtain the Heating Minimum Air Volume Rate without regard to the pressure drop across the indoor coil assembly.

e. For non-ducted heat pumps, the Heating Minimum Air Volume Rate is the air volume rate that results during each test when the unit operates at an external static pressure of zero inches of water and at the indoor fan setting used at low compressor capacity (two-capacity system) or minimum compressor speed (variable-speed system). For units having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan, use the lowest fan setting allowed for heating.

3.1.4.6 *Heating Intermediate Air Volume Rate.* a. For ducted heat pumps that regulate the speed of the indoor fan,

$$\text{Heating Intermediate Air Volume Rate} = \text{Heating Certified Air Volume Rate} \cdot \frac{H2_V \text{ Test Fan Speed}}{H1_2 \text{ Test Fan Speed}}.$$

b. For such heat pumps, obtain the Heating Intermediate Air Volume Rate without regard to the external static pressure.

c. For ducted heat pumps that regulate the air volume rate delivered by the indoor fan, the manufacturer must specify the Heating Intermediate Air Volume Rate. For such heat pumps, conduct the $H2_V$ Test at an external static pressure that does not cause instability or an automatic shutdown of the indoor blower while being as close to, but not less than,

$$H2_V \text{ Test } \Delta P_{st} = \Delta P_{st,H1_2} \cdot \left[\frac{\text{Heating Intermediate Air Volume Rate}}{\text{Heating Certified Air Volume Rate}}\right]^2,$$

where $\Delta P_{st,H1_2}$ is the minimum external static pressure that was specified for the $H1_2$ Test.

d. For non-ducted heat pumps, the Heating Intermediate Air Volume Rate is the air volume rate that results when the heat pump operates at an external static pressure of zero inches of water and at the fan speed selected by the controls of the unit for the $H2_V$ Test conditions.

3.1.4.7 *Heating Nominal Air Volume Rate.* Except for the noted changes, determine the Heating Nominal Air Volume Rate using the approach described in Section 3.1.4.6. Required changes include substituting ''$H1_N$ Test'' for ''$H2_V$ Test'' within the first Section 3.1.4.6 equation, substituting ''$H1_N$ Test ΔP_{st}'' for ''$H2_V$ Test ΔP_{st}'' in the second Section 3.1.4.6 equation, substituting ''$H1_N$ Test'' for each ''$H2_V$ Test'', and substituting ''Heating Nominal Air Volume Rate'' for each ''Heating Intermediate Air Volume Rate.''

3.1.5 *Indoor test room requirement when the air surrounding the indoor unit is not supplied from the same source as the air entering the indoor unit.* If using a test set-up where air is ducted directly from the air reconditioning apparatus to the indoor coil inlet (see Figure 2, Loop Air-Enthalpy Test Method Arrangement, of ASHRAE Standard 37–88), maintain the dry bulb temperature within the test room within ±5.0 °F of the applicable Sections 3.2 and 3.6 dry bulb temperature test condition for the air entering the indoor unit.

3.1.6 *Air volume rate calculations.* For all steady-state tests and for Frost Accumulation ($H2$, $H2_1$, $H2_2$, $H2_V$) Tests, calculate the air volume rate through the indoor coil as specified in Sections 7.8.3.1 and 7.8.3.2 of ASHRAE Standard 37–88. When using the Outdoor Air Enthalpy Method, follow Sections 7.8.3.1 and 7.8.3.2 to calculate the air volume rate through the outdoor coil. To express air volume rates in terms of standard air, use:

$$\overline{\dot{V}}_s = \frac{\overline{\dot{V}}_{mx}}{0.075 \frac{lbm_{da}}{ft^3} \cdot v'_n \cdot \left[1 + W_n\right]} = \frac{\overline{\dot{V}}_{mx}}{0.075 \frac{lbm_{da}}{ft^3} \cdot v_n} \qquad (3\text{-}1)$$

where,

$\overline{\dot{V}}_s =$

air volume rate of standard (dry) air, $(ft^3/min)_{da}$

$\overline{\dot{V}}_{mx} =$

air volume rate of the air-water vapor mixture, $(ft^3/min)_{mx}$

$v'_n =$

specific volume of air-water vapor mixture at the nozzle, ft^3 per lbm of the air-water vapor mixture

W_n= humidity ratio at the nozzle, lbm of water vapor per lbm of dry air

0.075= the density associated with standard (dry) air

V_n= specific volume of the dry air portion of the mixture evaluated at the dry-bulb temperature, vapor content, and barometric pressure existing at the nozzle, ft^3 per lbm of dry air.

3.1.7 Test sequence. When testing a ducted unit (except if a heating-only heat pump), conduct the A or A_2 Test first to establish or verify the Cooling Certified Air Volume Rate. For ducted heat pumps where the Heating and Cooling Certified Air Volume Rates are different, make the first heating mode test one that requires the Heating Certified Air Volume Rate. For ducted heating-only heat pumps, conduct the H1 or $H1_2$ Test first to establish or verify the Heating Certified Air Volume Rate. When conducting an optional cyclic test, always conduct it immediately after the steady-state test that requires the same test conditions. For variable-speed systems, the first test using the Cooling Minimum Air Volume Rate should precede the EV Test if you expect to adjust the indoor fan control options when preparing for the first Minimum Air Volume Rate test. Under the same circumstances, the first test using the Heating Minimum Air Volume Rate should precede the $H2_V$ Test. The test laboratory makes all other decisions on the test sequence.

3.1.8 Requirement for the air temperature distribution leaving the indoor coil. For at least the first cooling mode test and the first heating mode test, monitor the temperature distribution of the air leaving the indoor coil using the grid of individual sensors described in Sections 2.5 and 2.5.4. For the 30-minute data collection interval used to determine capacity, the maximum spread among the outlet dry bulb temperatures from any data sampling must be 1.5 °F or less. Install the mixing devices described in Section 2.5.4.2 to minimize the temperature spread.

3.1.9 Control of auxiliary resistive heating elements. Except as noted, disable heat pump resistance elements used for heating indoor air at all times, including during defrost cycles and if they are normally regulated by a heat comfort controller. For heat pumps equipped with a heat comfort controller, enable the heat pump resistance elements only during the below-described, short test that follows the H1 or, if conducted, the H1C Test. Set the heat comfort controller to provide the maximum supply air temperature. With the heat pump operating and while maintaining the Heating Certified Air Volume Rate, measure the temperature of the air leaving the indoor-side beginning 5 minutes after activating the heat comfort controller. Sample the outlet dry-bulb temperature at regular intervals that span 5 minutes or less. Collect data for 10 minutes, obtaining at least 3 samples. Calculate the average outlet temperature over the 10-minute interval, T_{CC}.

3.2 Cooling mode tests for different types of air conditioners and heat pumps.

3.2.1 Tests for a unit having a single-speed compressor that is tested with a fixed-speed indoor fan installed, with a constant-air-volume-rate indoor fan installed, or with no indoor fan installed. Conduct two steady-state wet coil tests, the A and B Tests. Use the two optional dry-coil tests, the steady-state C Test and the cyclic D Test, to determine the cooling mode cyclic degradation coefficient, C^c_D. If the two optional tests are not conducted, assign C^c_D the default value of 0.25. Table 3 specifies test conditions for these four tests.

TABLE 3.—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A FIXED-SPEED INDOOR FAN, A CONSTANT AIR VOLUME RATE INDOOR FAN, OR NO INDOOR FAN

Test Description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Cooling Air Volume Rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A Test—required (steady, wet coil)	80	67	95	[1] 75	Cooling Certified [2]
B Test—required (steady, wet coil)	80	67	82	[1] 65	Cooling Certified [2]
C Test—optional (steady, dry coil)	80	[3]	82	–	Cooling Certified [2]
D Test—optional (cyclic, dry coil)	80	[3]	82	–	[4]

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in Section 3.1.4.1.
[3] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. DOE recommends using an indoor air wet-bulb temperature of 57 °F or less.
[4] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the C Test.

3.2.2 Tests for a unit having a single-speed compressor and a variable-speed variable-air-volume-rate indoor fan installed.

3.2.2.1 Indoor fan capacity modulation that correlates with the outdoor dry bulb temperature. Conduct four steady-state wet coil tests: The A_2, A_1, B_2, and B_1 Tests. Use the two optional dry-coil tests, the steady-state C_1 Test and the cyclic D_1 Test, to determine the cooling mode cyclic degradation coefficient, C^c_D. If the two optional tests are not conducted, assign C^c_D the default value of 0.25. Table 4 specifies test conditions for these six tests.

3.2.2.2 Indoor fan capacity modulation based on adjusting the sensible to total (S/T) cooling capacity ratio. The testing requirements are the same as specified in Section 3.2.1 and Table 3. Use a Cooling Certified Air Volume Rate that represents a normal residential installation. If performed, conduct the steady-state C Test and the cyclic D Test with the unit operating in the same S/T capacity control mode as used for the B Test.

TABLE 4.—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A VARIABLE AIR VOLUME RATE INDOOR FAN THAT IS CONTROLLED AS SPECIFIED IN 3.2.2.1

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
A_2 Test—required (steady, wet coil)	80	67	95	([1]) 75	Cooling Certified [2].
A_1 Test—required (steady, wet coil)	80	67	95	([1]) 75	Cooling Minimum [3].
B_2 Test—required (steady, wet coil)	80	67	82	([1]) 65	Cooling Certified [2].
B_1 Test—required (steady, wet coil)	80	67	82	([1]) 65	Cooling Minimum [3].
C_1 Test [4]—optional (steady, dry coil)	80	([4])	82	.....	Cooling Minimum [3].
D_1 Test [4]—optional (cyclic, dry coil)	80	([4])	82	.....	([5]).

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in Section 3.1.4.1.
[3] Defined in Section 3.1.4.2.
[4] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. DOE recommends using an indoor air wet-bulb temperature of 57 °F or less.
[5] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the C_1 Test.

3.2.3 *Tests for a unit having a two-capacity compressor.* a. (See Definition 1.44.) Conduct four steady-state wet coil tests: The A_2, A_1, B_2, and B_1 Tests. Use the two optional dry-coil tests, the steady-state C_1 Test and the cyclic D_1 Test, to determine the cooling mode cyclic degradation coefficient, C^c_D. If the two optional tests are not conducted, assign C^c_D the default value of 0.25. Table 5 specifies test conditions for these six tests.

b. For units having a variable speed indoor fan that is modulated to adjust the sensible to total (S/T) cooling capacity ratio, use Cooling Certified and Cooling Minimum Air Volume Rates that represent a normal residential installation. Additionally, if conducting the optional dry-coil tests, operate the unit in the same S/T capacity control mode as used for the B_1 Test.

c. Two-capacity units that operate exclusively, via a lockout feature, at low compressor capacity when space cooling must be tested as a single speed system (see Section 3.2.1 and Table 3). If a two-capacity

unit locks out low capacity operation at outdoor temperatures that are less than 95 °F, conduct the A_1 Test using the outdoor temperature conditions listed for the F_1 Test in Table 6 rather than using the outdoor temperature conditions listed in Table 5 for the A_1 Test.

TABLE 5.—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor capacity	Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
A_2 Test—required (steady, wet coil)	80	67	95	[1] 75	High	Cooling Certified [2].
A_1 Test—required (steady, wet coil)	80	67	95	[1] 75	Low	Cooling Minimum [3].
B_2 Test—required (steady, wet coil)	80	67	82	[1] 65	High	Cooling Certified [2].
B_1 Test—required (steady, wet coil)	80	67	82	[1] 65	Low	Cooling Minimum [3].
C_1 Test [4]—optional (steady, dry coil)	80	[4]	82		Low	Cooling Minimum [3].
D_1 Test [4]—optional (cyclic, dry coil)	[4] 80	82		Low	[5].	

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in Section 3.1.4.1.
[3] Defined in Section 3.1.4.2.
[4] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. DOE recommends using an indoor air wet-bulb temperature of 57 °F or less.
[5] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the C_1 Test.

3.2.4 Tests for a unit having a variable-speed compressor. a. Conduct five steady-state wet coil tests: the A_2, E_V, B_2, B_1, and F_1 Tests. Use the two optional dry-coil tests, the steady-state G_1 Test and the cyclic I_1 Test, to determine the cooling mode cyclic degradation coefficient, $C_D{}^c$. If the two optional tests are not conducted, assign $C_D{}^c$ the default value of 0.25. Table 6 specifies test conditions for these seven tests. Determine the intermediate compressor speed cited in Table 6 using:

$$\text{Intermediate speed} = \text{Minimum speed} + \frac{\text{Maximum speed} - \text{Minimum speed}}{3}$$

where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed.

b. For units that modulate the indoor fan speed to adjust the sensible to total (S/T) cooling capacity ratio, use Cooling Certified, Cooling Intermediate, and Cooling Minimum Air Volume Rates that represent a normal residential installation. Additionally, if conducting the optional dry-coil tests, operate the unit in the same S/T capacity control mode as used for the F_1 Test.

TABLE 6.—COOLING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Compressor speed	Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
A[2] Test—required (steady, wet coil)	80	67	95	[1]75	Maximum	Cooling Certified [2]
B_2 Test—required (steady, wet coil)	80	67	82	[1]65	Maximum	Cooling Certified [2]
E_V Test—required (steady, wet coil)	80	67	87	[1]69	Intermediate	Cooling Intermediate [3]
B_1 Test—required (steady, wet coil)	80	67	82	[1]65	Minimum	Cooling Minimum [4]
F_1 Test—required (steady, wet coil)	80	67	67	[1]53.5	Minimum	Cooling Minimum [4]
G_1 Test[5]—optional (steady, dry coil)	80	(5)	67		Minimum	Cooling Minimum [4]
I_1 Test[5]—optional (cyclic, dry coil)	80	5	67		Minimum	[6]

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in Section 3.1.4.1.
[3] Defined in Section 3.1.4.3.
[4] Defined in Section 3.1.4.2.
[5] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. DOE recommends using an indoor air wet bulb temperature of 57 °F or less.
[6] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the G_1 Test.

3.3 *Test procedures for steady-state wet coil cooling mode tests* (the *A, A_2, A_1, B, B_2, B_1, E_V,* and F_1 Tests). a. For the pretest interval, operate the test room reconditioning apparatus and the unit to be tested until maintaining equilibrium conditions for at least 30 minutes at the specified Section 3.2 test conditions. Use the exhaust fan of the airflow measuring apparatus and, if installed, the indoor fan of the test unit to obtain and then maintain the indoor air volume rate and/or external static pressure specified for the particular test. Continuously record (see Definition 1.14):

(1) The dry-bulb temperature of the air entering the indoor coil,

(2) The water vapor content of the air entering the indoor coil,

(3) The dry-bulb temperature of the air entering the outdoor coil, and

(4) For the Section 2.2.4 cases where its control is required, the water vapor content of the air entering the outdoor coil.

b. Refer to Section 3.11 for additional requirements that depend on the selected secondary test method. After satisfying the pretest equilibrium requirements, make the measurements specified in Table 5 of ASHRAE Standard 37–88 for the Indoor Air Enthalpy method and the user-selected secondary method. Except for external static pressure, make the Table 5 measurements at equal intervals that span 10 minutes or less. Measure external static pressure every 5 minutes or less. Continue data sampling until you obtain a 30-minute period (*e.g.*, four consecutive 10-minute samples) where the test tolerances specified in Table 7 are satisfied. For those continuously recorded parameters, use the entire data set from the 30-minute interval to evaluate Table 7 compliance. Determine the average electrical power consumption of the air conditioner or heat pump over the same 30-minute interval.

c. Calculate indoor-side total cooling capacity as specified in Section 7.3.3.1 of ASHRAE Standard 37–88. Do not adjust the parameters used in calculating capacity for the permitted variations in test conditions. Evaluate air enthalpies based on the measured barometric pressure. Assign the average total space cooling capacity and electrical power consumption over the 30-minute data collection interval to the variables $\dot{Q}_c^k(T)$ and $\dot{E}_c^k(T)$, respectively. For these two variables, replace the ''*T*'' with the nominal outdoor temperature at which the test was conducted. The superscript *k* is used only when testing multi-capacity units. Use the superscript *k*=2 to denote a test with the unit operating at high capacity or maximum speed, *k*=1 to denote low capacity or minimum speed, and *k*=*v* to denote the intermediate speed. For units tested without an indoor fan installed, decrease $\dot{Q}_c^k(T)$ by

$$\frac{1250 \text{ Btu/h}}{1000 \text{ scfm}} \cdot \overline{\dot{V}}_s ,$$

and increase $\dot{E}_c^k(T)$ by,

$$\frac{365 \text{ W}}{1000 \text{ scfm}} \cdot \overline{\dot{V}}_s ,$$

Where

$$\overline{\dot{V}}_s$$

is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (SCFM).

TABLE 7.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.3 STEADY-STATE WET COIL COOLING MODE TESTS AND SECTION 3.4 DRY COIL COOLING MODE TESTS

	Test operating tolerance (1)	Test Condition Tolerance (2)
Indoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F:		
Entering temperature	1.0	[3] 0.3
Leaving temperature	[3] 1.0	
Outdoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	[4] 2.0	
Outdoor wet-bulb, °F:		
Entering temperature	1.0	[5] 0.3
Leaving temperature	[4] 1.0	
External resistance to airflow, inches of water	0.05	[6] 0.02
Electrical voltage, % of rdg.	2.0	1.5
Nozzle pressure drop, % of rdg.	2.0	.....

[1] See Definition 1.40.
[2] See Definition 1.39.
[3] Only applies during wet coil tests; does not apply during steady-state, dry coil cooling mode tests.
[4] Only applies when using the Outdoor Air Enthalpy Method.
[5] Only applies during wet coil cooling mode tests where the unit rejects condensate to the outdoor coil.
[6] Only applies when testing non-ducted units.

d. For air conditioners and heat pumps having a constant-air-volume-rate indoor fan, the five additional steps listed below are required if the average of the measured external static pressures exceeds the applicable Section 3.1.4 minimum (or target) external static pressure (ΔP_{min}) by 0.03 inches of water or more.

1. Measure the average power consumption of the indoor fan motor ($\dot{E}_{fan,1}$) and record the corresponding external static pressure (ΔP_1) during or immediately following the 30-minute interval used for determining capacity.

2. After completing the 30-minute interval and while maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.

3. After re-establishing steady readings of the fan motor power and external static pressure, determine average values for the indoor fan power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.

4. Approximate the average power consumption of the indoor fan motor at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}(\Delta P_{min} - \Delta P_1) + \dot{E}_{fan,1}.$$

5. Increase the total space cooling capacity, $\dot{Q}_c^k(T)$, by the quantity $(\dot{E}_{fan,1} - \dot{E}_{fan,min})$, when expressed on a Btu/h basis. Decrease the total electrical power, $\dot{E}_c^k(T)$, by the same fan power difference, now expressed in watts.

3.4 Test procedures for the optional steady-state dry coil cooling mode tests (the C, C_1, and G*1* Tests). a. Except for the modifications noted in this section, conduct the steady-state dry coil cooling mode tests as specified in Section 3.3 for wet coil tests. Prior to recording data during the steady-state dry coil test, operate the unit at least one hour after achieving dry coil conditions. Drain the drain pan and plug the drain opening. Thereafter, the drain pan should remain completely dry.

b. Denote the resulting total space cooling capacity and electrical power derived from

the test as $\dot{Q}^{k}_{ss,dry}(T)$ and $\dot{E}_{ss,dry}(T)$. In preparing for the Section 3.5 cyclic test, record the average indoor-side air volume rate, $\dot{V}$, specific heat $C_{p,a}$ of the air, (expressed on dry air basis), specific volume of the air at the nozzle(s), v_n , humidity ratio at the nozzle(s),W_n , and either pressure difference or velocity pressure for the flow nozzle(s). For units having a variable-speed indoor fan (that provides either a constant or variable air volume rate) that will or may be tested during the cyclic dry coil cooling mode test with the indoor fan turned off (see Section 3.5), include the electrical power used by the indoor fan motor among the recorded parameters from the 30-minute test.

3.5 Test procedures for the optional cyclic dry coil cooling mode tests (the D, D_1, and I_1 Tests). a. After completing the steady-state dry-coil test, remove the Outdoor Air Enthalpy method test apparatus, if connected, and begin manual OFF/ON cycling of the unit's compressor. The test set-up should otherwise be identical to the set-up used during the steady-state dry coil test. When testing heat pumps, leave the switchover valve during the compressor OFF cycles in the same position as used for the compressor ON cycles, unless automatically changed by the controls of the unit. For units having a variable-speed indoor fan, the manufacturer has the option of electing at the outset whether to conduct the cyclic test with the indoor fan enabled or disabled. Always revert to testing with the indoor fan disabled if cyclic testing with the fan enabled is unsuccessful.

b. For units having a single-speed or two-capacity compressor, cycle the compressor OFF for 24 minutes and then ON for 6 minutes ($\Delta\tau_{cyc,dry}$ = 0.5 hours). For units having a variable-speed compressor, cycle the compressor OFF for 48 minutes and then ON for 12 minutes ($\Delta\tau_{cyc,dry}$ = 1.0 hours). Repeat the OFF/ON compressor cycling pattern until you complete the test. Allow the controls of the unit to regulate cycling of the outdoor fan.

c. Sections 3.5.1 and 3.5.2 specify airflow requirements through the indoor coil of ducted and non-ducted systems, respectively. In all cases, use the exhaust fan of the airflow measuring apparatus (covered under Section 2.6) along with the indoor fan of the unit, if installed and operating, to approximate a step response in the indoor coil airflow. Regulate the exhaust fan to quickly obtain and then maintain the flow nozzle(s) static pressure difference or velocity pressure at the same value as was measured during the steady-state dry coil test. The pressure difference or velocity pressure should be within 2 percent of the value from the steady-state dry coil test within 15 seconds after airflow initiation. For units having a variable-speed indoor fan that ramps when cycling on and/or off, use the exhaust fan of the airflow measuring apparatus to impose a step response that begins at the initiation of ramp up and ends at the termination of ramp down.

d. For units having a variable-speed indoor fan, conduct the cyclic dry coil test using a pull-thru approach if any of the following occur when testing with the fan operating:

(1) The test unit automatically cycles off,

(2) Its blower motor reverses, or

(3) The unit operates for more than 30 seconds at a external static pressure that is 0.1 inches of water or more higher than the value measured during the prior steady-state test.

e. For the pull-thru approach, disable the indoor fan and use the exhaust fan of the airflow measuring apparatus to generate the specified flow nozzle(s) static pressure difference or velocity pressure. If the exhaust fan cannot deliver the required pressure difference because of resistance created by the unpowered blower, temporarily remove the blower. After completing a minimum of two complete compressor OFF/ON cycles, determine the overall cooling delivered and total electrical energy consumption during any subsequent data collection interval where the test tolerances given in Table 8 are satisfied. DOE recommends obtaining repeatable results for two or more data collection intervals before terminating the test. If available, use electric resistance heaters (see Section 2.1) to minimize the variation in the inlet air temperature. With regard to the Table 8 parameters, continuously record the dry-bulb temperature of the air entering the indoor and outdoor coils during periods when air flows through the respective coils. Sample the water vapor content of the indoor coil inlet air at least every 2 minutes during periods when air flows through the coil. Record external static pressure and the air volume rate indicator (either nozzle pressure difference or velocity pressure) at least every minute during the interval that air flows through the indoor coil. (These regular measurements of the airflow rate indicator are in addition to the required measurement at 15 seconds after flow initiation.) Sample the electrical voltage at least every 2 minutes beginning 30 seconds after compressor start-up. Continue until the compressor, the outdoor fan, and the indoor fan (if it is installed and operating) cycle off.

f. For ducted units, continuously record the dry-bulb temperature of the air entering (as noted above) and leaving the indoor coil. Or if using a thermopile, continuously record the difference between these two temperatures during the interval that air flows through the indoor coil. For non-ducted units, make the same dry-bulb temperature measurements beginning when the compressor cycles on and ending when indoor coil airflow ceases.

Integrate the electrical power over complete cycles of length $\Delta\tau_{cyc,dry}$. For ducted units tested with an indoor fan installed and operating, integrate electrical power from indoor fan OFF to indoor fan OFF. For all other ducted units and for non-ducted units, integrate electrical power from compressor OFF to compressor OFF. (Some cyclic tests will use the same data collection intervals to determine the electrical energy and the total space cooling. For other units, you will terminate data collection used to determine the electrical energy before you terminate data collection used to determine total space cooling.]

TABLE 8.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR CYCLIC DRY COIL COOLING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [2]
Indoor entering dry-bulb temperature [3], °F	2.0	0.5
Indoor entering wet-bulb temperature, °F	.....	([4])
Outdoor entering dry-bulb temperature [3], °F	2.0	0.5
External resistance to airflow [3], inches of water	0.05	
Airflow nozzle pressure difference or velocity pressure [3], % of reading	2.0	[5] 2.0
Electrical voltage ([6]), % of rdg.	2.0	1.5

[1] See Definition 1.40.

[2] See Definition 1.39.

[3] Applies during the interval that air flows through the indoor (outdoor) coil except for the first 30 seconds after flow initiation. For units having a variable-speed indoor fan that ramps, the tolerances listed for the external resistance to airflow apply from 30 seconds after achieving full speed until ramp down begins.

[4] Shall at no time exceed a wet-bulb temperature that results in condensate forming on the indoor coil.

[5] The test condition shall be the average nozzle pressure difference or velocity pressure measured during the steady-state dry coil test.

[6] Applies during the interval when at least one of the following—the compressor, the outdoor fan, or, if applicable, the indoor fan—are operating except for the first 30 seconds after compressor start-up.

g. If the Table 8 tolerances are satisfied over the complete cycle, record the measured electrical energy consumption as $e_{cyc,dry}$ and express it in units of watt-hours. Calculate the total space cooling delivered, $q_{cyc,dry}$, in units of Btu using,

$$q_{cyc,\,dry} = \frac{60 \cdot \overline{\dot{V}} \cdot C_{p,a} \cdot \Gamma}{\left[v_n' \cdot (1 + W_n)\right]} = \frac{60 \cdot \overline{\dot{V}} \cdot C_{p,a} \cdot \Gamma}{v_n} \qquad (3.5-1)$$

where $\dot{V}$, $C_{p,a}$, v_n' (or v_n), and W_n are the values recorded during the Section 3.4 dry coil steady-state test and,

$$\Gamma = \int_{\tau_1}^{\tau_2} \left[T_{a1}(\tau) - T_{a2}(\tau)\right] d\tau, \text{ hr} \cdot {}^{\circ}\text{F}.$$

$T_{a1}(\tau)$ = dry bulb temperature of the air entering the indoor coil at time τ, °F.

$T_{a2}(\tau)$ = dry bulb temperature of the air leaving the indoor coil at time τ, °F.

τ_1 = for ducted units, the elapsed time when airflow is initiated through the indoor coil; for non-ducted units, the elapsed time when the compressor is cycled on, hr.

τ_2 = the elapsed time when indoor coil airflow ceases, hr.

3.5.1 *Procedures when testing ducted systems.* The automatic controls that are normally installed with the test unit must govern the OFF/ON cycling of the air moving equipment on the indoor side (exhaust fan of the airflow measuring apparatus and, if installed, the indoor fan of the test unit). For example, for ducted units tested without an indoor fan installed but rated based on using a fan time delay relay, control the indoor coil airflow according to the rated ON and/or OFF delays provided by the relay. For ducted units having a variable-speed indoor fan that has been disabled (and possibly removed),

$$\frac{365 \text{ W}}{1000 \text{ scfm}} \cdot \overline{\dot{V}}_s \cdot \left[\tau_2 - \tau_1\right], \qquad (3.5\text{-}2)$$

and decrease $q_{cyc,dry}$ by,

$$\frac{1250 \text{ Btu/h}}{1000 \text{ scfm}} \cdot \overline{\dot{V}}_s \cdot \left[\tau_2 - \tau_1\right]. \qquad (3.5-3)$$

where

$$\overline{\dot{V}}_s$$

is the average indoor air volume rate from the Section 3.4 dry coil steady-state test and is expressed in units of cubic feet per minute of standard air (SCFM). For units having a variable-speed indoor fan that is disabled during the cyclic test, increase $e_{cyc,dry}$ and decrease $q_{cyc/dry}$ based on:

a. The product of $[\tau_2 - \tau_1]$ and the indoor fan power measured during or following the dry coil steady-state test or,

b. The following algorithm if the indoor fan ramps its speed when cycling.

1. Measure the electrical power consumed by the variable-speed indoor fan at a minimum of three operating conditions: at the speed/air volume rate/external static pressure that was measured during the steady-state test, at operating conditions associated with the midpoint of the ramp-up interval, and at conditions associated with the midpoint of the ramp-down interval. For these measurements, the tolerances on the airflow volume or the external static pressure are the same as required for the Section 3.4 steady-state test.

2. For each case, determine the fan power from measurements made over a minimum of 5 minutes.

3. Approximate the electrical energy consumption of the indoor fan if it had operated during the cyclic test using all three power measurements. Assume a linear profile during the ramp intervals. The manufacturer must provide the durations of the ramp-up and ramp-down intervals. If a manufacturer-supplied ramp interval exceeds 45 seconds, use a 45-second ramp interval nonetheless when estimating the fan energy. The manufacturer is allowed to choose option a, and forego the extra testing burden of option b, even if the unit ramps indoor fan speed when cycling.

3.5.2 *Procedures when testing non-ducted systems.* Do not use air dampers when conducting cyclic tests on non-ducted units. Until the last OFF/ON compressor cycle, airflow through the indoor coil must cycle off and on in unison with the compressor. For the last OFF/ON compressor cycle—the one used to determine $e_{cyc,dry}$ and $q_{cyc,dry}$—use the exhaust fan of the airflow measuring apparatus and the indoor fan of the test unit to have indoor airflow start 3 minutes prior to compressor cut-on and end three minutes after compressor cutoff. Subtract the electrical energy used by the indoor fan during the 3 minutes prior to compressor cut-on from the integrated electrical energy, $e_{cyc,dry}$. Add the electrical energy used by the indoor fan during the 3 minutes after compressor cutoff to the integrated cooling capacity, $q_{cyc,dry}$. For the case where the non-ducted unit uses a variable-speed indoor fan which is disabled during the cyclic test, correct $e_{cyc,dry}$ and $q_{cyc,dry}$ using the same approach as prescribed in Section 3.5.1 for ducted units having a disabled variable-speed indoor fan.

3.5.3 *Cooling mode cyclic degradation coefficient calculation.* Use two optional dry-coil tests to determine the cooling mode cyclic degradation coefficient, C^c_D. If the two optional tests are not conducted, assign C^c_D the default value of 0.25. Evaluate C^c_D using the above results and those from the Section 3.4 dry coil steady-state test.0

$$C_D^c = \frac{1 - \dfrac{EER_{cyc,\,dry}}{EER_{ss,\,dry}}}{1 - CLF}$$

where,

$$EER_{cyc,\,dry} = \frac{q_{cyc,dry}}{e_{cyc,dry}},$$

the average energy efficiency ratio during the cyclic dry coil cooling mode test, Btu/W·h

$$EER_{ss,\,dry} = \frac{\dot{Q}_{ss,\,dry}}{\dot{E}_{ss,\,dry}},$$

the average energy efficiency ratio during the steady-state dry coil cooling mode test, Btu/W·h

$$CLF = \frac{q_{cyc,\,dry}}{\dot{Q}_{ss,\,cyc} \cdot \Delta\tau_{cyc,\,dry}},$$

the cooling load factor, dimensionless.

Round the calculated value for C^c_D to the nearest 0.01. If C^c_D is negative, then set it equal to zero.

3.6 *Heating mode tests for different types of heat pumps, including heating-only heat pumps.*

3.6.1 Tests for a heat pump having a single-speed compressor that is tested with a fixed speed indoor fan installed, with a constant-air-volume-rate indoor fan installed, or with no indoor fan installed. Conduct three tests: the High Temperature (*H1*) Test, the Frost Accumulation (*H2*) Test, and the Low Temperature (*H3*) Test. Conduct the optional High Temperature Cyclic (*H1C*) Test to determine the heating mode cyclic degradation coefficient, C_D^h . If this optional test is not conducted, assign C_D^h the default value of 0.25. Test conditions for these four tests are specified in Table 9.

TABLE 9.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A FIXED-SPEED INDOOR FAN, A CONSTANT AIR VOLUME RATE INDOOR FAN, OR NO INDOOR FAN

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H1 Test (required, steady)	70	60 (max)	47	43	Heating certified [1]
H1C Test (optional, cyclic)	70	60 (max)	47	43	[2]
H2 Test (required)	70	60 (max)	35	33	Heating certified [1]
H3 Test (required, steady)	70	60 (max)	17	15	Heating certified [1]

[1] Defined in Section 3.1.4.4.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the *H1* Test.

3.6.1.1 Non-defrost heat pump. For non-defrost heat pumps (see Definition 1.30) that cease compressor operation at outdoor dry-bulb temperatures less than 37 °F, do not conduct the *H2* and *H3* Tests. Instead, conduct a Maximum Temperature (*H0*) Test using the Table 9 Heating Certified Air Volume Rate and the indoor and outdoor coil air inlet conditions specified for the $H0_1$ Test in Table 11.

3.6.1.2 Heat pump having a heat comfort controller. Test any heat pump that has a heat comfort controller (see Definition 1.26) according to Section 3.6.1 and Table 9 with the heat comfort controller disabled. Additionally, conduct the abbreviated test described in Section 3.1.9 with the heat comfort controller active to determine the system's maximum supply air temperature.

3.6.2 Tests for a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan: capacity modulation correlates with outdoor dry bulb temperature. Conduct five tests: two High Temperature Tests ($H1_2$ and $H1_1$), one Frost Accumulation Test ($H2_2$), and two Low Temperature Tests ($H3_2$ and $H3_1$). Conducting one Frost Accumulation Test ($H2_1$), is optional. Conduct the optional High Temperature Cyclic ($H1C_1$) Test to determine the heating mode cyclic degradation coefficient, C_D^h If this optional test is not conducted, assign C_D^h the default value of 0.25. Table 10 specifies test conditions for these seven tests. If you do not conduct the optional $H2_1$ Test, use the following equations to approximate the capacity and electrical power of the heat pump at the $H2_1$ test conditions:

$$\dot{Q}_h^{k=1}(35) = QR_h^{k=2}(35) \cdot \left\{ \dot{Q}_h^{k=1}(17) + 0.6 \cdot \left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17) \right] \right\}$$

$$\dot{E}_h^{k=1}(35) = PR_h^{k=2}(35) \cdot \left\{ \dot{E}_h^{k=1}(17) + 0.6 \cdot \left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17) \right] \right\}$$

where,

$$QR_h^{k=2}(35) = \frac{\dot{Q}_h^{k=2}(35)}{\dot{Q}_h^{k=2}(17) + 0.6 \cdot \left[\dot{Q}_h^{k=2}(47) - \dot{Q}_h^{k=2}(17) \right]}$$

$$PR_h^{k=2}(35) = \frac{\dot{E}_h^{k=2}(35)}{\dot{E}_h^{k=2}(17) + 0.6 \cdot \left[\dot{E}_h^{k=2}(47) - \dot{E}_h^{k=2}(17) \right]}$$

The quantities $\dot{Q}_h^{k=2}(47)$, $\dot{E}_h^{k=2}(47)$, $\dot{Q}_h^{k=1}(47)$, and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_2$ and $H1_1$ Tests and evaluated as specified in Section 3.7; the quantities $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ are determined from the $H2_2$ Test and evaluated as specified in Section 3.9; and the quantities $\dot{Q}_h^{k=2}(17)$, $\dot{E}_h^{k=2}(17)$, $\dot{Q}_h^{k=1}(17)$, and $\dot{E}_h^{k=1}(17)$ are determined from the $H3_2$ and $H3_1$ Tests and evaluated as specified in Section 3.10.

TABLE 10.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A VARIABLE AIR VOLUME RATE INDOOR FAN

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
$H1_2$ Test (required, steady)	70	60 (max)	47	43	Heating certified [1]
$H1_1$ Test (required, steady)	70	60 (max)	47	43	Heating minimum [2]
$H1C_1$ Test (optional, cyclic)	70	60 (max)	47	43	[3]
$H2_2$ Test (required)	70	60 (max)	35	33	Heating certified [1]
$H2_1$ Test (optional)	70	60 (max)	35	33	Heating minimum [2]
$H3_2$ Test (required, steady)	70	60 (max)	17	15	Heating certified [1]
$H3_1$ Test (required, steady)	70	60 (max)	17	15	Heating minimum [2]

[1] Defined in Section 3.1.4.4.
[2] Defined in Section 3.1.4.5.
[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the $H1_1$ Test.

3.6.3 Tests for a heat pump having a two-capacity compressor (see Definition 1.44).

a. Conduct one Maximum Temperature Test ($H0_1$), two High Temperature Tests ($H1_2$ and $H1_1$), one Frost Accumulation Test ($H2_2$), and one Low Temperature Test ($H3_2$). Conduct an additional Frost Accumulation Test ($H2)_1$ and Low Temperature Test ($H3_1$) if both of the following conditions exist:

1. You need to know the heat pump's capacity and electrical power at low compressor capacity for outdoor temperatures of 37 °F and less to complete the Section 4.2.3 seasonal performance calculations, and

2. The heat pump's controls allow low capacity operation at outdoor temperatures of 37 °F and less.

b. Conduct the optional Maximum Temperature Cyclic Test ($H0C_1$) to determine the heating mode cyclic degradation coefficient, $C_D{}^h$. If this optional test is not conducted, assign $C_D{}^h$ the default value of 0.25. Table 11 specifies test conditions for these eight tests.

TABLE 11.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Compressor capacity	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ Test (required, steady)	70	60(max)	62	56.5	Low	Heating minimum [1]
$H0C_1$ Test (optional, cyclic)	70	60(max)	62	56.5	Low	[2]
$H1_2$ Test (required, steady)	70	60(max)	47	43	High	Heating certified [3]
$H1_1$ Test (required, steady)	70	60(max)	47	43	Low	Heating minimum [2]
$H2_2$ Test (required)	70	60(max)	35	33	High	Heating certified [3]
$H2_1$ Test [4] (required)	70	60(max)	35	33	High	Heating minimum [1]
$H3_2$ Test (required, steady)	70	60(max)	17	15	High	Heating certified [3]
$H3_1$ Test[4] (required, steady)	70	60(max)	17	15	Low	Heating minimum [1]

[1] Defined in Section 3.1.4.5.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the *H01* Test.
[3] Defined in Section 3.1.4.4.
[4] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37 °F is needed to complete the Section 4.2.3 *HSPF* calculations.

3.6.4 Tests for a heat pump having a variable-speed compressor. Conduct one Maximum Temperature Test ($H0_1$), two High Temperature Tests ($H1_2$ and $H1_1$), one Frost Accumulation Test ($H2_V$), and one Low Temperature Test ($H3_2$). Conducting one or both of the following tests is optional: an additional High Temperature Test ($H1_N$) and an additional Frost Accumulation Test ($H2_2$). Conduct the optional Maximum Temperature Cyclic ($H0C_1$) Test to determine the heating mode cyclic degradation coefficient, $C_D{}^h$. If this optional test is not conducted, assign $C_D{}^h$ the default value of 0.25. Table 12 specifies test conditions for these eight tests. Determine the intermediate compressor speed cited in Table 12 using the heating mode maximum and minimum compressors speeds and:

$$\text{Intermediate speed} = \text{Minimum speed} + \frac{\text{Maximum speed} - \text{Minimum speed}}{3}$$

where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed. If you do not conduct the $H2_2$ Test, use the following equations to approximate the capacity and electrical power at the $H2_2$ test conditions:

$$\dot{Q}_h^{k=2}(35) = 0.90 \cdot \left\{\dot{Q}_h^{k=2}(17) + 0.6 \cdot \left[\dot{Q}_h^{k=2}(47) - \dot{Q}_h^{k=2}(17)\right]\right\}$$

$$\dot{E}_h^{k=2}(35) = 0.985 \cdot \left\{\dot{E}_h^{k=2}(17) + 0.6 \cdot \left[\dot{E}_h^{k=2}(47) - \dot{E}_h^{k=2}(17)\right]\right\}.$$

Determine the quantities $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ Test and evaluate them according to Section 3.7. Determine the quantities $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ Test and evaluate them according to Section 3.10. For heat pumps where the heating mode maximum compressor speed exceeds its cooling mode maximum compressor speed, conduct the $H1_N$ Test if the manufacturer requests it. If you conduct the $H1_N$ Test, operate the heat pump's compressor at the same speed as used for the cooling mode A_2 Test. Refer to the last sentence of Section 4.2 to see how the results of the $H1_N$ Test may be used in calculating the heating seasonal performance factor.

TABLE 12.—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit Temperature (°F)		Air entering outdoor unit Temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ Test (required, steady)	70	60(max)	62	56.5	Minimum	Heating minimum [1]
$H0C_1$ Test (optional, cyclic)	70	60(max)	62	56.5	Minimum	[2]
$H1_2$ Test (required, steady)	70	60(max)	47	43	Maximum	Heating certified [3]
$H1_1$ Test (required, steady)	70	60(max)	47	43	Minimum	Heating minimum [2]
$H1_N$ Test (optional, steady)	70	60(max)	47	43	Cooling Mode Maximum.	Heating nominal [4]
$H2_2$ Test (optional)	70	60(max)	35	33	Maximum	Heating certified [3]
$H2_V$ Test (required)	70	60(max)	35	33	Intermediate	Heating intermediate [5]
$H3_2$ Test (required, steady)	70	60(max)	17	15	Maximum	Heating certified [3]

[1] Defined in Section 3.1.4.5.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the H01 Test.
[3] Defined in Section 3.1.4.4.
[4] Defined in Section 3.1.4.7.
[5] Defined in Section 3.1.4.6.

3.7 *Test procedures for steady-state Maximum Temperature and High Temperature heating mode tests* (the *H0*, $H0_1$, *H1*, $H1_2$, $H1_1$, and $H1_N$ Tests). a. For the pretest interval, operate the test room reconditioning apparatus and the heat pump until equilibrium conditions are maintained for at least 30 minutes at the specified Section 3.6 test conditions. Use the exhaust fan of the airflow measuring apparatus and, if installed, the indoor fan of the heat pump to obtain and then maintain the indoor air volume rate and/or the external static pressure specified for the particular test. Continuously record the dry-bulb temperature of the air entering the indoor coil, and the dry-bulb temperature and water vapor content of the air entering the outdoor coil. Refer to Section 3.11 for additional requirements that depend on the selected secondary test method. After satisfying the pretest equilibrium requirements, make the measurements specified in Table 5 of ASHRAE Standard 37–88 for the Indoor Air Enthalpy method and the user-selected secondary method. Except for external static pressure, make the Table 5 measurements at equal intervals that span 10 minutes or less. Measure external static pressure every 5 minutes or less. Continue data sampling until you obtain a 30-minute period (e.g., four consecutive 10-minute samples) where the test tolerances specified in Table 13 are satisfied. For those continuously recorded parameters, use the entire data set for the 30-minute interval when evaluating Table 13 compliance. Determine the average electrical power consumption of the heat pump over the same 30-minute interval.

TABLE 13.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.7 AND SECTION 3.10 STEADY-STATE HEATING MODE TESTS.

	Test operating tolerance (1)	Test condition tolerance (2)
Indoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F:		
Entering temperature	1.0	
Leaving temperature	1.0	
Outdoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	(3) 2.0	
Outdoor wet-bulb, °F:		
Entering temperature	1.0	0.3
Leaving temperature	(3) 1.0	
External resistance to airflow, inches of water	0.05	(4) 0.02
Electrical voltage, % of rdg	2.0	1.5
Nozzle pressure drop, % of rdg	2.0	

[1] See Definition 1.40.
[2] See Definition 1.39.
[3] Only applies when the Outdoor Air Enthalpy Method is used.
[4] Only applies when testing non-ducted units.

Calculate indoor-side total heating capacity as specified in Section 7.3.4.1 of ASHRAE Standard 37–88. Do not adjust the parameters used in calculating capacity for the permitted variations in test conditions. Assign the average space heating capacity and electrical power over the 30-minute data collection interval to the variables and $\dot{Q}_h^k(T)$ and $\dot{E}_h^k(T)$, respectively. The ''*T*'' and superscripted ''*k*'' are the same as described in Section 3.3. Additionally, for the heating mode, use the superscript *k*=N to denote results from the optional $H1_N$ Test, if conducted.

b. For heat pumps tested without an indoor fan installed, increase $\dot{Q}_h^k(T)$ by

$$\frac{1250\ \text{Btu/h}}{1000\ \text{scfm}} \cdot \overline{\dot{V}}_s ,$$

and increase $\dot{E}_h^k(T)$ by,

$$\frac{365\ \text{W}}{1000\ \text{scfm}} \cdot \overline{\dot{V}}_s ,$$

where

$$\overline{\dot{V}}_s$$

is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (SCFM). During the 30-minute data collection interval of a High Temperature Test, pay attention to preventing a defrost cycle. Prior to this time, allow the heat pump to perform a defrost cycle if automatically initiated by its own controls. As in all cases, wait for the heat pump's defrost controls to automatically terminate the defrost cycle. Heat pumps that undergo a defrost should operate in the heating mode for at least 10 minutes after defrost termination prior to beginning the 30-minute data collection interval. For some heat pumps, frost may accumulate on the outdoor coil during a High Temperature test. If the indoor coil leaving air temperature or the difference between the leaving and entering air temperatures decreases by more than 1.5 °F over the 30-minute data collection interval, then do not use the collected data to determine capacity. Instead, initiate a defrost cycle. Begin collecting data no sooner than 10 minutes after defrost termination. Collect 30 minutes of new data during which the Table 13 test tolerances are satisfied. In this case, use only the results from the second 30-minute data collection interval to evaluate $\dot{Q}_h^k(47)$ and $\dot{E}_h^k(47)$.

If conducting the optional cyclic heating mode test, which is described in Section 3.8, record the average indoor-side air volume rate,

$$\overline{\dot{V}},$$

specific heat of the air $C_{p,a}$ (expressed on dry air basis), specific volume of the air at the nozzle(s), v_n (or v_n), humidity ratio at the nozzle(s), W_n, and either pressure difference or velocity pressure for the flow nozzle(s). If either or both of the below criteria apply, determine the average, steady-state, electrical power consumption of the indoor fan motor ($\dot{E}_{fan,1}$).

a. the Section 3.8 cyclic test will be conducted and the heat pump has a variable-speed indoor fan that is expected to be disabled during the cyclic test, or

b. the heat pump has a (variable-speed) constant-air volume-rate indoor fan and during the steady-state test the average external static pressure (ΔP_1) exceeds the applicable Section 3.1.4.4 minimum (or targeted) external static pressure (ΔP_{min}) by 0.03 inches of water or more. Determine $\dot{E}_{fan,1}$ by making measurements during the 30-minute data collection interval, or immediately following the test and prior to changing the test conditions. When the above ''b'' criteria applies, conduct the following four steps after determining $\dot{E}_{fan,1}$ (which corresponds to ΔP_1).

1. While maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.

2. After re-establishing steady readings for fan motor power and external static pressure, determine average values for the indoor fan power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.

3. Approximate the average power consumption of the indoor fan motor if the 30-minute test had been conducted at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}(\Delta P_{min} - \Delta P_1) + \dot{E}_{fan,1}.$$

4. Decrease the total space heating capacity, $\dot{Q}_h^k(T)$, by the quantity $(\dot{E})_{fan,1} - \dot{E}_{fan,min}$, when expressed on a Btu/h basis. Decrease the total electrical power, $(\dot{E})_h^k(T)$, by the same fan power difference, now expressed in watts.

3.8 *Test procedures for the optional cyclic heating mode tests* (the $H0C_1$, $H1C$, and $H1C_1$ Tests). a. Except as noted below, conduct the cyclic heating mode test as specified in Section 3.5. As adapted to the heating mode, replace Section 3.5 references to ''the steady-state dry coil test'' with ''the heating mode steady-state test conducted at the same test conditions as the cyclic heating mode test.'' Use the test tolerances in Table 14 rather than Table 8. Record the outdoor coil entering wet-bulb temperature according to the requirements given in Section 3.5 for the outdoor coil entering dry-bulb temperature. Drop the subscript ''*dry*'' used in variables cited in Section 3.5 when referring to quantities from the cyclic heating mode test. Determine the total space heating delivered during the cyclic heating test, q_{cyc}, as specified in Section 3.5 except for making the following changes.

(1) When evaluating Equation 3.5–1, use the values of,

$$\overline{\dot{V}},$$

$C_{p,a}v_b$ (or v_n), and W_n that were recorded during the Section 3.7 steady-state test conducted at the same test conditions.

(2) Calculate γ using,

$$\Gamma = \int_{\tau_1}^{\tau_2} \left[T_{a1}(\tau) - T_{a2}(\tau)\right] \delta\tau,\ \text{hr} \cdot {}^{\circ}\text{F}.$$

b. For ducted heat pumps tested without an indoor fan installed (excluding the special case where a variable-speed fan is temporarily removed), increase q_{cyc} by the amount calculated using Equation 3.5–3. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–2. In making these calculations, use the average indoor air volume rate

$$(\overline{\dot{V}}_s)$$

determined from the Section 3.7 steady-state heating mode test conducted at the same test conditions.

c. For non-ducted heat pumps, subtract the electrical energy used by the indoor fan during the 3 minutes after compressor cutoff from the non-ducted heat pump's integrated heating capacity, q_{cyc}.

d. For single-speed heat pumps that defrosted before completing the Section 3.7 *H1* (or $H1_1$) steady-state test, DOE recommends initiating a defrost cycle before cycling the heat pump OFF and ON according to Section 3.5. Do not restrict air movement through the indoor coil if the heat pump cycles off its indoor fan during the defrost cycle. If conducting a defrost cycle, operate the single-speed heat pump for at least 10 minutes after defrost termination. After that, begin cycling the heat pump immediately or delay until you have re-established the specified test conditions. Pay attention to preventing defrosts after beginning the cycling process. However, if a defrost is automatically or manually initiated once the OFF/ON cycling begins, switch to operating the heat pump continuously until 10 minutes after defrost termination. After that, resume the OFF/ON cycling while conducting a minimum of two complete compressor OFF/ON cycles before determining q_{cyc} and e_{cyc}.

3.8.1 Heating mode cyclic degradation coefficient calculation. Use the results from the optional cyclic test and the required steady-state test that was conducted at the same test conditions to determine the heating mode cyclic degradation coefficient, C_D^h. If the optional test is not conducted, assign C_D^h the default value of 0.25.

$$C_D^h = \frac{1 - \frac{COP_{cyc}}{COP_{ss}(T_{cyc})}}{1 - HLF}$$

where,

$$COP_{cyc} = \frac{q_{cyc}}{3.413\frac{Btu}{W \cdot h} \cdot e_{cyc}},$$

the average coefficient of performance during the cyclic heating mode test, dimensionless.

$$COP_{ss}(T_{cyc}) = \frac{\dot{Q}_h^k(T_{cyc})}{3.413\frac{Btu/h}{W} \cdot \dot{E}_h^k(T_{cyc})},$$

the average coefficient of performance during the steady-state heating mode test conducted at the same test conditions *i.e.,* same outdoor dry bulb temperature, T_{cyc}, and speed/capacity, *k*, if applicable—as specified for the cyclic heating mode test, dimensionless.

$$HLF = \frac{q_{cyc}}{\dot{Q}_h^k(T_{cyc}) \cdot \Delta\tau_{cyc}},$$ the heating load factor, dimensionless.

T_{cyc} = the nominal outdoor temperature at which the cyclic heating mode test is conducted, 62 or 47 °F.

$\Delta\tau_{cyc}$ = the duration of the OFF/ON intervals; 0.5 hours when testing a heat pump having a single-speed or two-capacity compressor and 1.0 hour when testing a heat pump having a variable-speed compressor.

Round the calculated value for C_h^D to the nearest 0.01. If $C^h{}_D$ is negative, then set it equal to zero.

TABLE 14.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR CYCLIC HEATING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [2]
Indoor entering dry-bulb temperature [3], °F	2.0 [3]	0.5
Indoor entering wet-bulb temperature [3], °F	1.0	.....
Outdoor entering dry-bulb temperature [3], °F	2.0	0.5
Outdoor entering wet-bulb temperature [3], °F	2.0	1.0
External resistance to air-flow [3], inches of water	0.05	.....
Airflow nozzle pressure difference or velocity pressure [3], % of reading	2.0	2.0 [4]
Electrical voltage [5], % of rdg	2.0	1.5

[1] See Definition 1.40.
[2] See Definition 1.39.
[3] Applies during the interval that air flows through the indoor (outdoor) coil except for the first 30 seconds after flow initiation. For units having a variable-speed indoor fan that ramps, the tolerances listed for the external resistance to airflow shall apply from 30 seconds after achieving full speed until ramp down begins.
[4] The test condition shall be the average nozzle pressure difference or velocity pressure measured during the steady-state test conducted at the same test conditions.
[5] Applies during the interval that at least one of the following—the compressor, the outdoor fan, or, if applicable, the indoor fan—are operating, except for the first 30 seconds after compressor start-up.

3.9 Test procedures for Frost Accumulation heating mode tests (the *H2, H2$_2$, H2$_V$,* and *H2$_1$* Tests). a. Confirm that the defrost controls of the heat pump are set as specified in Section 2.2.1. Operate the test room reconditioning apparatus and the heat pump for at least 30 minutes at the specified Section 3.6 test conditions before starting the ''preliminary'' test period. The preliminary test period must immediately precede the ''official'' test period, which is the heating and defrost interval over which data are collected for evaluating average space heating capacity and average electrical power consumption.

b. For heat pumps containing defrost controls which are likely to cause defrosts at intervals less than one hour, the preliminary test period starts at the termination of an automatic defrost cycle and ends at the termination of the next occurring automatic defrost cycle. For heat pumps containing defrost controls which are likely to cause defrosts at intervals exceeding one hour, the preliminary test period must consist of a heating interval lasting at least one hour followed by a defrost cycle that is either manually or automatically initiated. In all cases, the heat pump's own controls must govern when a defrost cycle terminates.

c. The official test period begins when the preliminary test period ends, at defrost termination. The official test period ends at the termination of the next occurring automatic defrost cycle. When testing a heat pump that uses a time-adaptive defrost control system (see Definition 1.41), however, manually initiate the defrost cycle that ends the official test period at the instant indicated by instructions provided by the manufacturer. If the heat pump has not undergone a defrost after 12 hours, immediately conclude the test and use the results from the full 12-hour period to calculate the average space heating capacity and average electrical power consumption. For heat pumps that turn the indoor fan off during the defrost cycle, take steps to cease forced airflow through the indoor coil and block the outlet duct whenever the heat pump's controls cycle off the indoor fan. You should use the outlet damper box described in Section 2.5.4.1, if installed, to affect the blocked outlet duct.

d. Defrost termination occurs when the controls of the heat pump actuate the first change in converting from defrost operation to normal heating operation. Defrost initiation occurs when the controls of the heat pump first alter its normal heating operation in order to eliminate possible accumulations of frost on the outdoor coil.

e. To constitute a valid Frost Accumulation test, you must satisfy the test tolerances specified in Table 15 during both the preliminary and official test periods. As noted in Table 15, test operating tolerances are specified for two sub-intervals: When heating, except for the first 10 minutes after the termination of a defrost cycle (Sub-interval H) and when defrosting, plus these same first 10 minutes after defrost termination (Sub-interval D). Evaluate compliance with Table 15 test condition tolerances and the majority of the test operating tolerances using the averages from measurements recorded only during Sub-interval H. Continuously record the dry bulb temperature of the air entering the indoor coil, and the dry bulb temperature and water vapor content of the air entering the outdoor coil. Sample the remaining parameters listed in Table 15 at equal intervals that span 10 minutes or less.

f. For the official test period, collect and use the following data to calculate average space heating capacity and electrical power. During heating and defrosting intervals when the controls of the heat pump (act to) have the indoor fan on, continuously record the dry-bulb temperature of the air entering (as noted above) and leaving the indoor coil. If using a thermopile, continuously record the difference between the leaving and entering dry-bulb temperatures during the interval(s) that air flows through the indoor coil. For heat pumps tested without an indoor fan installed, determine the corresponding cumulative time (in hours) of indoor coil airflow, $\Delta\tau_a$. Sample measurements used in calculating the air volume rate (refer to Sections 7.8.3.1 and 7.8.3.2 of ASHRAE Standard 37–88) at equal intervals that span 10 minutes or less. Record the electrical energy consumed, expressed in watt-hours, from defrost termination to defrost termination, $e^k_{DEF}(35)$, as well as the corresponding elapsed time in hours, $\Delta\tau_{FR}$.

TABLE 15.—TEST OPERATING AND TEST CONDITION TOLERANCES FOR FROST ACCUMULATION HEATING MODE TESTS

	Test Operating Tolerance [1]		Test Condition Tolerance [2] Sub-interval H [3]
	Sub-interval H [3]	Sub-interval D [4]	
Indoor entering dry-bulb temperature, °F	2.0	[5] 4.0	0.5
Indoor entering wet-bulb temperature, °F	1.0	.....	.....
Outdoor entering dry-bulb temperature, °F	2.0	10.0	1.0
Outdoor entering wet-bulb temperature, °F	1.5	.....	0.5
External resistance to airflow, inches of water	0.05	.....	[6] 0.02
Electrical voltage, % of rdg	2.0	.....	1.5

[1] See Definition 1.40.
[2] See Definition 1.39.
[3] Applies when the heat pump is in the heating mode, except for the first 10 minutes after termination of a defrost cycle.
[4] Applies during a defrost cycle and during the first 10 minutes after the termination of a defrost cycle when the heat pump is operating in the heating mode.
[5] For heat pumps that turn off the indoor fan during the defrost cycle, the noted tolerance only applies during the 10 minute interval that follows defrost termination.
[6] Only applies when testing non-ducted heat pumps.

3.9.1 Average space heating capacity and electrical power calculations. Evaluate average space heating capacity, $\dot{Q}_h^k(35)$, when expressed in units of Btu per hour, using:

$$\dot{Q}_h^k(35) = \frac{60 \cdot \overline{\dot{V}} \cdot C_{p,a} \cdot \Gamma}{\Delta\tau_{FR}\left[v'_n \cdot (1+W_n)\right]} = \frac{60 \cdot \overline{\dot{V}} \cdot C_{p,a} \cdot \Gamma}{\Delta\tau_{FR} \cdot v_n}$$

where,

$$\overline{\dot{V}} =$$

the average indoor air volume rate measured during Sub-interval H, cfm.
$C_{p,a} = 0.24 + 0.444 \cdot W_n$, the constant pressure specific heat of the air-water vapor mixture that flows through the indoor coil and is expressed on a dry air basis, Btu / lbm_{da} · °F.
V_n = specific volume of the air-water vapor mixture at the nozzle, ft^3 / lbm_{mx}.
W_n = humidity ratio of the air-water vapor mixture at the nozzle, lbm of water vapor per lbm of dry air.
$\Delta\tau_{FR} = \tau_2 - \tau_1$, the elapsed time from defrost termination to defrost termination, hr.

$$\Gamma = \int_{\tau_1}^{\tau_2} \left[T_{a2}(\tau) - T_{a1}(\tau)\right] d\tau, \text{ hr} \cdot {}^\circ\text{F}.$$

$T_{a1}(\tau)$= dry bulb temperature of the air entering the indoor coil at elapsed time τ, °F; only recorded when indoor coil airflow occurs; assigned the value of zero during periods (if any) where the indoor fan cycles off.
$T_{a2}(\tau)$= dry bulb temperature of the air leaving the indoor coil at elapsed time τ, °F; only recorded when indoor coil airflow occurs; assigned the value of zero during periods (if any) where the indoor fan cycles off.
τ_1 = the elapsed time when the defrost termination occurs that begins the official test period, hr.
τ_2 = the elapsed time when the next automatically occurring defrost termination occurs, thus ending the official test period, hr
V_n = specific volume of the dry air portion of the mixture evaluated at the dry-bulb temperature, vapor content, and barometric pressure existing at the nozzle, ft^3 per lbm of dry air.

Evaluate average electrical power, $\dot{E}^k_h(35)$, when expressed in units of watts, using:

$$\dot{E}\frac{k}{h}(35) = \frac{e_{def}(35)}{\Delta\tau_{FR}}.$$

For heat pumps tested without an indoor fan installed, increase $\dot{Q}^k_h(35)$ by,

$$\frac{1250 \text{ Btu/h}}{1000 \text{ scfm}} \cdot \overline{\dot{V}}_s \cdot \frac{\Delta\tau_a}{\Delta\tau_{FR}},$$

and increase $\dot{E}^k_h(35)$ by,

$$\frac{365 \text{ W}}{1000 \text{ scfm}} \cdot \overline{\dot{V}}_s \cdot \frac{\Delta\tau_a}{\Delta\tau_{FR}},$$

where $\dot{V}_s$ is the average indoor air volume rate measured during the Frost Accumulation heating mode test and is expressed in units of cubic feet per minute of standard air (SCFM). For heat pumps having a constant-air-volume-rate indoor fan, the five additional steps listed below are required if the average of the measured external static pressures exceeds the Section 3.1.4.4 minimum (or targeted) external static pressure (ΔP_{min}) by 0.03 inches of water or more.

1. Measure the average power consumption of the indoor fan motor ($\dot{E}_{fan,1}$) and record the corresponding external static pressure (ΔP_1) during or immediately following the 30-minute interval used for determining capacity.
2. After the 30-minute interval is completed and while maintaining the same test conditions, adjust the exhaust fan of the airflow measuring apparatus until the external static pressure increases to approximately $\Delta P_1 + (\Delta P_1 - \Delta P_{min})$.
3. After re-establishing steady readings for the fan motor power and external static pressure, determine average values for the indoor fan power ($\dot{E}_{fan,2}$) and the external static pressure (ΔP_2) by making measurements over a 5-minute interval.
4. Approximate the average power consumption of the indoor fan motor had the 30-minute tests been conducted at ΔP_{min} using linear extrapolation:

$$\dot{E}_{fan,min} = \frac{\dot{E}_{fan,2} - \dot{E}_{fan,1}}{\Delta P_2 - \Delta P_1}(\Delta P_{min} - \Delta P_1) + \dot{E}_{fan,1}.$$

5. Increase the total heating capacity, $\dot{Q}^k_h(35)$, by the quantity $[(\dot{E}_{fan,1} - \dot{E}_{fan,min}) \cdot (\Delta\tau_a / \Delta\tau_{a\,FR})]$, when expressed on a Btu/h basis. Decrease the total electrical power, $\dot{E}^k_h(35)$, by the same quantity, now expressed in watts.

3.9.2 *Demand defrost credit.* Assign the demand defrost credit, F_{def}, that is used in Section 4.2 to the value of 1 in all cases

except for heat pumps having a demand-defrost control system (Definition 1.20). For such qualifying heat pumps, evaluate F_{def} using,

$$F_{def} = 1 + 0.03 \cdot \left[1 - \frac{\Delta\tau_{def} - 1.5}{\Delta\tau_{max} - 1.5}\right],$$

where,

$\Delta\tau_{def}$ = the time between defrost terminations (in hours) or 1.5, whichever is greater.

$\Delta\tau_{max}$ = maximum time between defrosts as allowed by the controls (in hours) or 12, whichever is less.

For two-capacity heat pumps and for Section 3.6.2 units, evaluate the above equation using the $\Delta\tau_{def}$ that applies based on the Frost Accumulation Test conducted at high capacity and/or at the Heating Certified Air Volume Rate. For variable-speed heat pumps, evaluate $\Delta\tau_{def}$ based on the required Frost Accumulation Test conducted at the intermediate compressor speed.

3.10 *Test procedures for steady-state Low Temperature heating mode tests* (the *H3, $H3_2$*, and *$H3_1$* Tests). Except for the modifications noted in this section, conduct the Low Temperature heating mode test using the same approach as specified in Section 3.7 for the Maximum and High Temperature tests. After satisfying the Section 3.7 requirements for the pretest interval but before you begin collecting data to determine $\dot{Q}_h^k(17)$ and $\dot{E}_h^k(17)$, conduct a defrost cycle. This defrost cycle may be manually or automatically initiated. The defrost sequence must be terminated by the action of the heat pump's defrost controls. Begin the 30-minute data collection interval described in Section 3.7, from which $\dot{Q}_h^k(17)$ and $\dot{E}_h^k(17)$ are determined, no sooner than 10 minutes after defrost termination. Defrosts should be prevented over the 30-minute data collection interval.

3.11 *Additional requirements for the secondary test methods.* Prior to evaluating if the energy balance specified in Section 3.1.1 is obtained, you should make an adjustment to account for the energy loss within the air duct that connects the indoor coil and the location where the outlet dry-bulb temperature is measured. If using the Outdoor Air Enthalpy Method, you should make an adjustment to account for the energy loss within the air duct that connects the outdoor coil and the location where the outlet temperature is measured. In all cases, apply the correction to the indoor space conditioning capacity that is determined using the secondary test method.

3.11.1 *If using the Outdoor Air Enthalpy Method as the secondary test method.* During the ''official'' test, the outdoor air-side test apparatus described in Section 2.10.1 is connected to the outdoor unit. To help compensate for any effect that the addition of this test apparatus may have on the unit's performance, conduct a ''preliminary'' test where the outdoor air-side test apparatus is disconnected. Conduct a preliminary test prior to the first Section 3.2 steady-state cooling mode test and prior to the first Section 3.6 steady-state heating mode test. No other preliminary tests are required so long as the unit operates the outdoor fan during all cooling mode steady-state tests at the same speed and all heating mode steady-state tests at the same speed. If using more than one outdoor fan speed for the cooling mode steady-state tests, however, conduct a preliminary test prior to each cooling mode test where a different fan speed is first used. This same requirement applies for the heating mode tests.

3.11.1.1 *If a preliminary test precedes the official test.* The test conditions for the preliminary test are the same as specified for the official test. Connect the indoor air-side test apparatus to the indoor coil; disconnect the outdoor air-side test apparatus. Allow the test room reconditioning apparatus and the unit being tested to operate for at least one hour. After attaining equilibrium conditions, measure the following quantities at equal intervals that span 10 minutes or less:

1. The Section 2.10.1 evaporator and condenser temperatures or pressures

2. Parameters required according to the Indoor Air Enthalpy Method.

Continue these measurements until a 30-minute period (e.g., four consecutive 10-minute samples) is obtained where the Table 7 or Table 13, whichever applies, test tolerances are satisfied. After collecting 30 minutes of steady-state data, reconnect the outdoor air-side test apparatus to the unit. Adjust the exhaust fan of the outdoor airflow measuring apparatus until averages for the evaporator and condenser temperatures, or the saturated temperatures corresponding to the measured pressures, agree within ±0.5 °F of the averages achieved when the outdoor air-side test apparatus was disconnected. Calculate the averages for the reconnected case using five or more consecutive readings taken at one minute intervals. Make these consecutive readings after re-establishing equilibrium conditions and before initiating the official test.

3.11.1.2 *If a preliminary test does not precede the official test.* Connect the outdoor-side test apparatus to the unit. Adjust the exhaust fan of the outdoor airflow measuring apparatus to achieve the same external static pressure as measured during the prior preliminary test conducted with the unit operating in the same cooling or heating mode at the same outdoor fan speed.

3.11.1.3 *Official test.* a. Continue (preliminary test was conducted) or begin (no preliminary test) the official test by making measurements for both the Indoor and Outdoor Air Enthalpy Methods at equal intervals that span 10 minutes or less. Discontinue these measurement only after obtaining a 30-minute period where the specified test condition and test operating tolerances are satisfied. To constitute a valid official test,

(1) Achieve the energy balance specified in Section 3.1.1 and,

(2) For cases where you conduct a preliminary test, the capacities determined using the Indoor Air Enthalpy Method from the official and preliminary test periods must agree within 2.0 percent.

b. For space cooling tests, calculate capacity from the outdoor air enthalpy measurements as specified in Section 7.3.3.2 of ASHRAE Standard 37–88. Calculate heating capacity based on outdoor air enthalpy measurements as specified in Section 7.3.4.2 of the same ASHRAE Standard. You may adjust outdoor side capacities according to Section 7.3.3.3 of ASHRAE Standard 37–88 to account for line losses when testing split systems. Do not correct the average electrical power measurement as described in Section 8.5.3 of ASHRAE Standard 37–88.

3.11.2 *If using the Compressor Calibration Method as the secondary test method.* a. Conduct separate calibration tests using a calorimeter to determine the refrigerant flow rate. Or for cases where the superheat of the refrigerant leaving the evaporator is less than 5 °F, use the calorimeter to measure total capacity rather than refrigerant flow rate. Conduct these calibration tests at the same test conditions as specified for the tests in this Appendix. Operate the unit for at least one hour or until obtaining equilibrium conditions before collecting data that will be used in determining the average refrigerant flow rate or total capacity. Sample the data at equal intervals that span 10 minutes or less. Determine average flow rate or average capacity from data sampled over a 30-minute period where the Table 7 (cooling) or the Table 13 (heating) tolerances are satisfied. Otherwise, conduct the calibration tests according to ASHRAE Standard 23–93, ASHRAE Standard 41.9–88, and Section 7.5 of ASHRAE Standard 37–88.

b. Calculate space cooling and space heating capacities using the compressor calibration method measurements as specified in Sections 7.5.7 and 7.5.8, respectively, of ASHRAE Standard 37–88.

3.11.3 *If using the Refrigerant Enthalpy Method as the secondary test method.* Conduct this secondary method according to Section 7.6 of ASHRAE Standard 37–88. Calculate space cooling and space heating capacities using the refrigerant enthalpy method measurements as specified in Sections 7.6.4 and 7.6.5, respectively, of the same ASHRAE Standard.

3.12 *Rounding of space conditioning capacities for reporting purposes.* When reporting rated capacities, round them off as follows.

1. For capacities less than 20,000 Btu/h, round to the nearest 100 Btu/h.

2. For capacities between 20,000 and 37,999 Btu/h, round to the nearest 200 Btu/h.

3. For capacities between 38,000 and 64,999 Btu/h, round to the nearest 500 Btu/h.

For the capacities used to perform the Section 4 calculations, however, round only to the nearest integer.

4. Calculations of Seasonal Performance Descriptors

4.1 *Seasonal Energy Efficiency Ratio (SEER) Calculations.* For equipment covered under Sections 4.1.2, 4.1.3, and 4.1.4, evaluate the seasonal energy efficiency ratio,

$$SEER = \frac{\sum_{j=1}^{8} q_c(T_j)}{\sum_{j=1}^{8} e_c(T_j)} = \frac{\sum_{j=1}^{8} \frac{q_c(T_j)}{N}}{\sum_{j=1}^{8} \frac{e_c(T_j)}{N}}$$

where,

$$\frac{q_c(T_j)}{N} =$$

the ratio of the total space cooling provided during periods of the space cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season (N), Btu/h.

$$\frac{e_c(T_j)}{N} =$$

the electrical energy consumed by the test unit during periods of the space cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season (N), W.

T_j = the outdoor bin temperature, °F. Outdoor temperatures are grouped or ''binned.'' Use bins of 5 °F with the 8 cooling season bin temperatures being 67, 72, 77, 82, 87, 92, 97, and 102 °F.

$_j$ = the bin number. For cooling season calculations, j ranges from 1 to 8.

Additionally, for Sections 4.1.2, 4.1.3, and 4.1.4, use a building cooling load, $BL(T_j)$. When referenced, evaluate $BL(T_j)$ for cooling using,

$$BL(T_j) = \frac{(T_j - 65)}{95 - 65} \cdot \frac{\dot{Q}_c^{k=2}(95)}{1.1} \qquad (4.1\text{-}2)$$

where,

$\dot{Q}_c^{k=2}(95)$ = the space cooling capacity determined from the A_2 Test and calculated as specified in Section 3.3, Btu/h.

1.1 = sizing factor, dimensionless.

The temperatures 95 °F and 65 °F in the building load equation represent the selected outdoor design temperature and the zero-load base temperature, respectively.

4.1.1 *SEER calculations for an air conditioner or heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed.* a. Evaluate the seasonal energy efficiency ratio, expressed in units of Btu/watt-hour, using:

$$SEER = PLF(0.5) \cdot EER_B$$

where,

$$EER_B = \frac{\dot{Q}_c(82)}{\dot{E}_c(82)},$$

the energy efficiency ratio determined from the B Test described in Sections 3.2.1, 3.1.4.1, and 3.3, Btu/h per watt.

$PLF(0.5) = 1 - 0.5 \cdot C^c_D$, the part-load performance factor evaluated at a cooling load factor of 0.5, dimensionless.

b. Refer to Section 3.3 regarding the definition and calculation of $\dot{Q}_c(82)$ and $\dot{E}_c(82)$. If the optional tests described in Section 3.2.1 are not conducted, set the cooling mode cyclic degradation coefficient, $\dot{Q}_D{}^c$, to the default value specified in Section 3.5.3. If these optional tests are conducted, set $\dot{Q}^c_d$ to the lower of:

1. The value calculated as per Section 3.5.3 or

2. The Section 3.5.3 default value of 0.25.

4.1.2 *SEER calculations for an air conditioner or heat pump having a single-speed compressor and a variable-speed variable-air-volume-rate indoor fan.*

4.1.2.1 *Units covered by Section 3.2.2.1 where indoor fan capacity modulation correlates with the outdoor dry bulb temperature.* The manufacturer must provide information on how the indoor air volume rate or the indoor fan speed varies over the outdoor temperature range of 67 °F to 102 °F.

Calculate *SEER* using Equation 5.4-1. Evaluate the quantity

$$\frac{q_c(T_j)}{N}$$

in Equation 4.1-1 using,

$$\frac{q_c(T_j)}{N} = X(T_j) \cdot \dot{Q}_c(T_j) \cdot \frac{n_j}{N} \qquad (4.1.2\text{-}1)$$

where

$$X(T_j) = \left\{ \begin{array}{c} BL(T_j)/\dot{Q}_c(T_j) \\ \text{or} \\ 1 \end{array} \right\};$$

the cooling mode load factor for temperature bin $_j$, dimensionless.

$\dot{Q}_c(T_j)$ = the space cooling capacity of the test unit when operating at outdoor temperature, T_j, Btu/h.

$$\frac{n_j}{N} =$$

fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

a. For the space cooling season, assign

$$\frac{n_j}{N}$$

as specified in Table 16. Use Equation 4.1–2 to calculate the building load, $BL(T_j)$. Evaluate $\dot{Q}_C(T_j)$ using,

$$\dot{Q}_c(T_j) = \dot{Q}_c^{k=1}(T_j) + \frac{\dot{Q}_c^{k=2}(T_j) - Q_c^{k=1}(T_j)}{FP_c^{k=2} - FP_c^{k=1}} \cdot \left[FP_c(T_j) - FP_c^{k=1}\right] \qquad (4.1.2\text{-}2)$$

where,

$$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(82) + \frac{\dot{Q}_c^{k=1}(95) - \dot{Q}_c^{k=1}(82)}{95 - 82} \cdot (T_j - 82),$$

the space cooling capacity of the test unit at outdoor temperature T_j if operated at the Cooling Minimum Air Volume Rate, Btu/h.

$$\dot{Q}_c^{k=2}(T_j) = \dot{Q}_c^{k=2}(82) + \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95 - 82} \cdot (T_j - 82),$$

the space cooling capacity of the test unit at outdoor temperature T_j if operated at the Cooling Certified Air Volume Rate, Btu/h.

b. For units where indoor fan speed is the primary control variable, $FP_c^{k=1}$ denotes the fan speed used during the required A_1 and B_1 Tests (see Section 3.2.2.1), $FP_c^{k=2}$ denotes the fan speed used during the required A_2 and B_2 Tests, and $FP_c(T_j)$ denotes the fan speed used by the unit when the outdoor temperature equals T_j. For units where indoor air volume rate is the primary control variable, the three FP_c's are similarly defined only now being expressed in terms of air volume rates rather than fan speeds. Refer to Sections 3.2.2.1, 3.1.4 to 3.1.4.2, and 3.3 regarding the definitions and calculations of $\dot{Q}_c^{k=1}(82)$, $\dot{Q}_c^{k=1}(95)$, $\dot{Q}_c^{k=2}(82)$, and $\dot{Q}_c^{k=2}(95)$.

Calculate

$$\frac{e_c(T_j)}{N}$$

in Equation 4.1 using,

$$\frac{e_c(T_j)}{N} = \frac{X(T_j) \cdot \dot{E}_c(T_j)}{PLF_j} \cdot \frac{n_j}{N} \qquad (4.1.2\text{-}3)$$

where,

$PLF_j = 1 - C_D^c \cdot [1 - X(T_j)]$, the part load factor, dimensionless.

$\dot{E}_c(T_j)$ = the electrical power consumption of the test unit when operating at outdoor temperature T_j, W.

The quantities $X(T_j)$ and n_j/N are the same quantities as used in Equation 4.1.2–1. If the optional tests described in Section 3.2.2.1 and Table 4 are not conducted, set the cooling mode cyclic degradation coefficient, C_D^c, to the default value specified in Section 3.5.3. If these optional tests are conducted, set C_D^c to the lower of

a. The value calculated as per Section 3.5.3 or

b. The Section 3.5.3 default value of 0.25.

Evaluate $\dot{E}(T_j)$ using,

$$\dot{E}_c(T_j) = \dot{E}_c^{k=1}(T_j) + \frac{\dot{E}_c^{k=2}(T_j) - \dot{E}_c^{k=2}(T_j)}{FP_c^{k=2} - FP_c^{k=1}} \cdot \left[FP_c(T_j) - FP_c^{k=1}\right] \qquad (4.1.2\text{-}4)$$

where,

$$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(82) + \frac{\dot{E}_c^{k=1}(95) - \dot{E}_c^{k=1}(82)}{95 - 82} \cdot (T_j - 82),$$

the electrical power consumption of the test unit at outdoor temperature T_j if operated at the Cooling Minimum Air Volume Rate, W.

$$\dot{E}_c^{k=2}(T_j) = \dot{E}_c^{k=2}(82) + \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95 - 82} \cdot (T_j - 82),$$

the electrical power consumption of the test unit at outdoor temperature T_j if operated at the Cooling Certified Air Volume Rate, W.

The parameters $FP_c^{k=1}$, $FP_c^{k=2}$, and $FP_c(T_j)$ are the same quantities that are used when evaluating Equation 4.1.2–2. Refer to Sections 3.2.2.1, 3.1.4 to 3.1.4.2, and 3.3 regarding the definitions and calculations of $\dot{E}_c^{k=1}(82)$, $\dot{E}_c^{k=1}(95)$, $\dot{E}_c^{k=2}(82)$, and $\dot{E}_c^{k=2}(95)$.

TABLE 16.—DISTRIBUTION OF FRACTIONAL HOURS WITHIN COOLING SEASON TEMPERATURE BINS

Bin number, *j*	Bin temperature range °F	Representative temperature for bin °F	Fraction of total temperature bin hours, n_j/N
1	65–69	67	0.214
2	70–74	72	0.231
3	75–79	77	0.216
4	80–84	82	0.161
5	85–89	87	0.104
6	90–94	92	0.052
7	95–99	97	0.018
8	100–104	102	0.004

4.1.2.2 *Units covered by Section 3.2.2.2 where indoor fan capacity modulation is used to adjust the sensible to total cooling capacity ratio.* Calculate SEER as specified in Section 4.1.1.

4.1.3 *SEER calculations for an air conditioner or heat pump having a two-capacity compressor.* Calculate *SEER* using Equation 4.1–1. Evaluate the space cooling capacity, $\dot{Q}_c^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=1}(T_j)$, of the test unit when operating at low compressor capacity and outdoor temperature T_j using,

$$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(82) + \frac{\dot{Q}_c^{k=1}(95) - \dot{Q}_c^{k=1}(82)}{95-82} \cdot (T_j - 82) \qquad (4.1.3\text{-}1)$$

$$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(82) + \frac{\dot{E}_c^{k=1}(95) - \dot{E}_c^{k=1}(82)}{95-82} \cdot (T_j - 82) \qquad (4.1.3\text{-}2)$$

where $\dot{Q}_c^{k=1}(95)$ and $\dot{E}_c^{k=1}(95)$ are determined from the A_1 Test, $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ are determined from the B_1 Test, and all are calculated as specified in Section 3.3. For two-capacity units that lock out low capacity operation at outdoor temperatures less than 95 °F (but greater than 82 °F), use Equations 4.1.4–1 and 4.1.4–2 rather than Equations 4.1.3–1 and 4.1.3.2 for estimating performance at low compressor capacity.

Evaluate the space cooling capacity, $\dot{Q}_c^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at high compressor capacity and outdoor temperature T_j using,

$$\dot{Q}_c^{k=2}(T_j) = \dot{Q}_c^{k=2}(82) + \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95-82} \cdot (T_j - 82) \qquad (4.1.3\text{-}3)$$

$$\dot{E}_c^{k=2}(T_j) = \dot{E}_c^{k=2}(82) + \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95-82} \cdot (T_j - 82) \qquad (4.1.3\text{-}4)$$

where $\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ are determined from the A_2 Test, $\dot{Q}_c^{k=2}(82)$ and $\dot{E}_c^{k=2}(82)$ are determined from the B_2 Test, and all are calculated as specified in Section 3.3.

The calculation of Equation 4.1–1 quantities

$$\frac{q_c(T_j)}{N} \text{ and } \frac{e_c(T_j)}{N}$$

differs depending on whether the test unit would operate at low capacity (Section 4.1.3.1), cycle between low and high capacity (Section 4.1.3.2), or operate at high capacity (Sections 4.1.3.3 and 4.1.3.4) in responding to the building load. For units that lock out low capacity operation at higher outdoor temperatures, the manufacturer must supply information regarding this temperature so that the appropriate equations are used. Use

$$\frac{q_c(T_j)}{N} = X^{k=1}(T_j) \cdot \dot{Q}_c^{k=1}(T_j) \cdot \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \frac{X^{k=1}(T_j) \cdot \dot{E}_c^{k=1}(T_j)}{PLF_j} \cdot \frac{n_j}{N}$$

where,

$X^{k=1}(T_j)$ = the cooling mode low capacity load factor for temperature bin *j*, dimensionless.

$PLF_j = 1 - C_D{}^c \cdot [1 - X^{k=1}(T_j)]$, the part load factor, dimensionless.

Equation 4.1–2 to calculate the building load, $BL(T)_j$ for each temperature bin.

4.1.3.1 *Steady-state space cooling capacity at low compressor capacity is greater than or equal to the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) \geq BL(T_j)$.*

$$\frac{n_j}{N} =$$

fractional bin hours for the cooling season; the ratio of the number of hours

during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

$$\frac{n_j}{N},$$

Obtain the fractional bin hours for the cooling season,

$$\frac{n_j}{N},$$

from Table 16. Use Equations 4.1.3–1 and 4.1.3–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$. If the optional tests described in Section 3.2.3 and Table 5 are not conducted, set the cooling mode cyclic degradation coefficient, C_D^c, to the default value specified in Section 3.5.3. If these optional tests are conducted, set C_D^c to the lower of:

a. The value calculated according to Section 3.5.3 or

b. The Section 3.5.3 default value of 0.25.

4.1.3.2 *Unit alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building cooling load at temperature* T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \left[X^{k=1}(T_j)\cdot \dot{Q}_c^{k=1}(T_j) + X^{k=2}(T_j)\cdot \dot{Q}_c^{k=2}(T_j)\right]\cdot \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \left[X^{k=1}(T_j)\cdot \dot{E}_c^{k=1}(T_j) + X^{k=2}(T_j)\cdot \dot{E}_c^{k=2}(T_j)\right]\cdot \frac{n_j}{N}$$

where,

$X^{k=1}(T_j)=$

$$\frac{\dot{Q}_c^{k=2}(T_j) - BL(T_j)}{\dot{Q}_c^{k=2}(T_j) - \dot{Q}_c^{k=1}(T_j)},$$

the cooling mode, low capacity load factor for temperature bin *j,* dimensionless.

$- X^{k=2}(T_j)=1 - X^{k=1}(T_j)$, the cooling mode, high capacity load factor for temperature bin *j,* dimensionless.

Obtain the fractional bin hours for the cooling season,

$$\frac{n_j}{N},$$

from Table 16. Use Equations 4.1.3–1 and 4.1.3–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$. Use Equations 4.1.3–3 and 4.1.3–4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$.

4.1.3.3 *Unit only operates at high (k=2) compressor capacity at temperature* T_j *and its capacity is greater than the building cooling load,* $BL(T_j) < \dot{Q}_c^{k=2}(T_j)$. This Section applies to units that lock out low compressor capacity operation at higher outdoor temperatures.

$$\frac{e_c(T_j)}{N} = \frac{X^{k=2}(T_j)\cdot \dot{E}_c^{k=2}(T_j)}{PLF_j}\cdot \frac{n_j}{N}$$

$$\frac{q_c(T_j)}{N} = X^{k=2}(T_j)\cdot \dot{Q}_c^{k=2}(T_j)\cdot \frac{n_j}{N}$$

where,

$X^{k=2}(T_j)= BL(T_j) / \dot{Q}_c^{k=2}(T_j)$, the cooling mode high capacity load factor for temperature bin *j,* dimensionless.

$PLF_j = 1 - C_D^c \cdot [1 - X^{k=2}(T_j)]$, the part load factor, dimensionless.

Obtain the fractional bin hours for the cooling season,

$$\frac{n_j}{N},$$

from Table 16. Use Equations 4.1.3–3 and 4.1.3–4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$. When evaluating the above equation for part load factor at high capacity, use the same value of C_D^c as used in the Section 4.1.3.1 calculations.

4.1.3.4 *Unit must operate continuously at high (k=2) compressor capacity at temperature* T_j $BL(T_j) \geq \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=2}(T_j)\cdot \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \dot{E}_c^{k=2}(T_j)\cdot \frac{n_j}{N}.$$

Obtain the fractional bin hours for the cooling season,

$$\frac{n_j}{N},$$

from Table 16. Use Equations 4.1.3–3 and 4.1.3–4, respectively, to evaluate $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$.

4.1.4 *SEER calculations for an air conditioner or heat pump having a variable-speed compressor.* Calculate *SEER* using Equation 4.1–1. Evaluate the space cooling capacity, $\dot{Q}_c^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=1}(T_j)$, of the test unit when operating at minimum compressor speed and outdoor temperature T_j, use,

$$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(67) + \frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67}\cdot (T_j - 67) \qquad (4.1.4\text{-}1)$$

$$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(67) + \frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67}\cdot (T_j - 67) \qquad (4.1.4\text{-}2)$$

where $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ are determined from the B_1 Test, $\dot{Q}_c^{k=1}(67)$ and $\dot{E}_c^{k=1}(67)$ are determined from the F_1 Test, and all four quantities are calculated as specified in Section 3.3. Evaluate the space cooling capacity, $\dot{Q}_c^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at maximum compressor speed and outdoor temperature T_j. Use Equations 4.1.3–3 and 4.1.3–4, respectively, where $\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ are determined from the A_2 Test, $\dot{Q}_c^{k=2}(82)$ and $\dot{E}_c^{k=2}(82)$ are determined from the B_2 Test, and all four quantities are calculated as specified in Section 3.3.

Calculate the space cooling capacity, $\dot{Q}_c^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=v}(T_j)$, of the test unit when operating at outdoor temperature T_j and the intermediate compressor speed used during the Section 3.2.4 (and Table 6) E_V Test using,

$$\dot{Q}_c^{k=v}(T_j) = \dot{Q}_c^{k=v}(87) + M_Q \cdot (T_j - 87) \qquad (4.1.4\text{-}3)$$

$$\dot{E}_c^{k=v}(T_j) = \dot{E}_c^{k=v}(87) + M_E \cdot (T_j - 87) \qquad (4.1.4\text{-}4)$$

where $\dot{Q}_c^{k=v}(87)$ and $\dot{E}_c^{k=v}(87)$ are determined from the E_V Test and calculated as specified in Section 3.3. Approximate the slopes of the $k=v$ intermediate speed cooling capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} \cdot (1 - N_Q)\right] + \left[N_Q \cdot \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95-82}\right]$$

$$M_E = \left[\frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} \cdot (1 - N_E)\right] + \left[N_E \cdot \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95-82}\right]$$

where,

$$N_Q = \frac{\dot{Q}_c^{k=v}(87) - \dot{Q}_c^{k=1}(87)}{\dot{Q}_c^{k=2}(87) - \dot{Q}_c^{k=1}(87)}, \text{ and}$$

$$N_E = \frac{\dot{E}_c^{k=v}(87) - \dot{E}_c^{k=1}(87)}{\dot{E}_c^{k=2}(87) - \dot{E}_c^{k=1}(87)}.$$

Calculating Equation 4.1–1 quantities

$$\frac{q_c(T_j)}{N} \text{ and } \frac{e_c(T_j)}{N}$$

differs depending upon whether the test unit would operate at minimum speed (Section 4.1.4.1), operate at an intermediate speed (Section 4.1.4.2), or operate at maximum speed (Section 4.1.4.3) in responding to the building load. Use Equation 4.1–2 to calculate the building load, $BL(T_j)$, for each temperature bin.

4.1.4.1 Steady-state space cooling capacity when operating at minimum compressor speed is greater than or equal to the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) \geq BL(T_j)$.

$$\frac{q_c(T_j)}{N} = X^{k=1}(T_j) \cdot \dot{Q}_c^{k=1}(T_j) \cdot \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \frac{X^{k=1}(T_j) \cdot \dot{E}_c^{k=1}(T_j)}{PLF_j} \cdot \frac{n_j}{N}$$

where,

$X^{k=1}(T_j) = BL(T_j) / \dot{Q}_c^{k=1}(T_j)$, the cooling mode minimum speed load factor for temperature bin j, dimensionless.

$PLF_j = 1 - C_D^c \cdot [1 - X^{k=1}(T_j)]$, the part load factor, dimensionless.

$$\frac{n_j}{N} =$$

fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

Obtain the fractional bin hours for the cooling season,

$$\frac{n_j}{N},$$

from Table 16. Use Equations 4.1.4–1 and 4.1.4–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$. If the optional tests described in Section 3.2.4 and Table 6 are not conducted, set the cooling mode cyclic degradation coefficient, C_D^c, to the default value specified in Section 3.5.3. If these optional tests are conducted, set C_D^c to the lower of:

a. The value calculated according to Section 3.5.3 or

b. The Section 3.5.3 default value of 0.25.

4.1.4.2 Unit operates at an intermediate compressor speed (k=i) in order to match the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=1}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=i}(T_j) \cdot \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \dot{E}_c^{k=i}(T_j) \cdot \frac{n_j}{N}$$

where,

$\dot{Q}_c^{k=i}(T_j) = BL(T_j)$, the space cooling capacity delivered by the unit in matching the building load at temperature T_j, Btu/h. The matching occurs with the unit operating at compressor speed $k = i$.

$\dot{E}_c^{k=i}(T_j) =$

$$\frac{\dot{Q}_c^{k=i}(T_j)}{EER^{k=i}(T_j)},$$

the electrical power input required by the test unit when operating at a compressor speed of $k = i$ and temperature T_j, W.

$EER^{k=i}(T_j)$ = the steady-state energy efficiency ratio of the test unit when operating at a compressor speed of $k = i$ and temperature T_j, Btu/h per W.

Obtain the fractional bin hours for the cooling season,

$$\frac{n_j}{N},$$

from Table 16. For each temperature bin where the unit operates at an intermediate compressor speed, determine the energy efficiency ratio $EER^{k=i}(T_j)$ using,

$$EER^{k=i}(T_j) = A + B \cdot T_j + C \cdot T_j^2.$$

For each unit, determine the coefficients A, B, and C by conducting the following calculations once:

$$D = \frac{T_2^2 - T_1^2}{T_v^2 - T_1^2}$$

$$C = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - B \cdot (T_1 - T_2)}{A = EER^{k=2}(T_2) - T_1^2 - T_2^2 - C \cdot T_2^2}$$

$$B = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - D \cdot \left[EER^{k=1}(T_1) - EER^{k=v}(T_v)\right]}{T_1 - T_2 - D \cdot (T_1 - T_v)}$$

where,

T_1 = the outdoor temperature at which the unit, when operating at minimum compressor speed, provides a space cooling capacity that is equal to the building load [$\dot{Q}_c^{k=i}(T_1) = BL(T_1)$], °F. Determine T_l by equating Equations 4.1.4–1 and 4.1–2 and solving for outdoor temperature.

T_v = the outdoor temperature at which the unit, when operating at the intermediate compressor speed used during the Section 3.2.4 E_V Test, provides a space cooling capacity that is equal to the building load [$\dot{Q}_c^{k=v}(T_v) = BL(T_v)$], °F. Determine T_v by equating Equations 4.1.4–3 and 4.1–2 and solving for outdoor temperature.

T_2 = the outdoor temperature at which the unit, when operating at maximum compressor speed, provides a space cooling capacity that is equal to the building load [$\dot{Q}_c^{k=2}(T_2) = BL(T_v)$], °F. Determine T_2 by equating Equations 4.1.3–3 and 4.1–2 and solving for outdoor temperature.

$$EER^{k=1}(T_1) = \frac{\dot{Q}_c^{k=1}(T_1) \quad [\text{Eqn. 4.1.4-1, substituting } T_1 \text{ for } T_j]}{\dot{E}_c^{k=1}(T_1) \quad [\text{Eqn. 4.1.4-2, substituting } T_1 \text{ for } T_j]}, \text{ Btu/h per W.}$$

$$EER^{k=v}(T_v) = \frac{\dot{Q}_c^{k=v}(T_v) \quad [\text{Eqn. 4.1.4-3, substituting } T_v \text{ for } T_j]}{\dot{E}_c^{k=v}(T_v) \quad [\text{Eqn. 4.1.4-4, substituting } T_v \text{ for } T_j]}, \text{ Btu/h per W.}$$

$$EER^{k=2}(T_2) = \frac{\dot{Q}_c^{k=2}(T_2) \quad [\text{Eqn. 4.1.3-3, substituting } T_2 \text{ for } T_j]}{\dot{E}_c^{k=2}(T_2) \quad [\text{Eqn. 4.1.3-4, substituting } T_2 \text{ for } T_j]}, \text{ Btu/h per W.}$$

4.1.4.3 Unit must operate continuously at maximum (*k=2*) compressor speed at temperature T_j, $BL(T_j) \geq \dot{Q}_c^{k=2}(T_j)$. Evaluate the Equation 4.1–1 quantities

$$\frac{q_c(T_j)}{N} \text{ and } \frac{e_c(T_j)}{N}$$

as specified in Section 4.1.3.4 with the understanding that $\dot{Q}_c^{k=2}(T_j)$ and $\dot{E}_c^{k=2}(T_j)$ correspond to maximum compressor speed operation and are derived from the results of the tests specified in Section 3.2.4.

4.2 Heating Seasonal Performance Factor (HSPF) Calculations. Six generalized climatic regions are depicted in Figure 2 and otherwise defined in Table 17. For each of these regions and for each applicable standardized design heating requirement, evaluate the heating seasonal performance factor using,

$$HSPF = \frac{\sum_j^J n_j \cdot BL(T_j)}{\sum_j^J e_h(T_j) + \sum_j^J RH(T_j)} \cdot F_{def} = \frac{\sum_j^J \left[\frac{n_j}{N} \cdot BL(T_j)\right]}{\sum_j^J \frac{e_h(T_j)}{N} + \sum_j^J \frac{RH(T_j)}{N}} \cdot F_{def} \qquad (4.2\text{-}1)$$

where,

$$\frac{e_h(T_j)}{N} =$$

the ratio of the electrical energy consumed by the heat pump during periods of the space heating season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season (*N*), W.

$$\frac{RH(T_j)}{N} =$$

the ratio of the electrical energy used for resistive space heating during periods when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season (*N*), W. Except as noted in Section 4.2.1.2, resistive space heating is modeled as being used to meet that portion of the building load that the heat pump does not meet because of insufficient capacity or because the heat pump automatically turns off at the lowest outdoor temperatures.

T_j = the outdoor bin temperature, °F. Outdoor temperatures are ''binned'' such that calculations are only performed based one temperature within the bin. Bins of 5 °F are used.

$$\frac{n_j}{N} =$$

fractional bin hours for the heating season; the ratio of the number of hours during the heating season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the heating season, dimensionless. Obtain

$$\frac{n_j}{N}$$

values from Table 17.

j = the bin number, dimensionless.

J = for each generalized climatic region, the total number of temperature bins, dimensionless. Referring to Table 17, *J* is the highest bin number (*j*) having a nonzero entry for the fractional bin hours for the generalized climatic region of interest.

F_{def} = the demand defrost credit described in Section 3.9.2, dimensionless.

$BL(T_j)$ = the building space conditioning load corresponding to an outdoor temperature of Tj for a given generalized climatic region and design heating requirement, Btu/h.

TABLE 17.—GENERALIZED CLIMATIC REGION INFORMATION

Region Number		I	II	III	IV	V	VI
Heating Load Hours, HLH		750	1250	1750	2250	2750	*2750
Outdoor Design Temperature, T_{od}		37	27	17	5	−10	30
$_j$ T_j(°F)		Fractional Bin Hours, n_j/N					
1	62	.291	.215	.153	.132	.106	.113
2	57	.239	.189	.142	.111	.092	.206
3	52	.194	.163	.138	.103	.086	.215
4	47	.129	.143	.137	.093	.076	.204
5	42	.081	.112	.135	.100	.078	.141
6	37	.041	.088	.118	.109	.087	.076
7	32	.019	.056	.092	.126	.102	.034
8	27	.005	.024	.047	.087	.094	.008
9	22	.001	.008	.021	.055	.074	.003
10	17	0	.002	.009	.036	.055	0
11	12	0	0	.005	.026	.047	0
12	7	0	0	.002	.013	.038	0
13	2	0	0	.001	.006	.029	0
14	−3	0	0	0	.002	.018	0
15	−8	0	0	0	.001	.010	0
16	−130	0	0	0	.005	0	0
17	−18	0	0	0	0	.002	0
18	−23	0	0	0	0	.001	0

*Pacific Coast Region.

Evaluate the building heating load using,

$$BL\left(T_J\right)=\frac{\left(65-T_J\right)}{65-T_{OD}}\cdot C\cdot DHR \quad 4.2\text{-}2$$

where,

T_{OD} = the outdoor design temperature, °F. An outdoor design temperature is specified for each generalized climatic region in Table 17.

C = 0.77, a correction factor which tends to improve the agreement between calculated and measured building loads, dimensionless.

DHR = the design heating requirement (see Definition 1.21), Btu/h.

Calculate the minimum and maximum design heating requirements for each generalized climatic region as follows:

$$DHR_{min}=\left\{\begin{array}{ll}\dot{Q}_h^k(47)\cdot\left[\frac{65-T_{OD}}{60}\right], & \text{for Regions I, II, III, IV, \& VI}\\ \dot{Q}_h^k(47), & \text{for Region V}\end{array}\right\}\begin{array}{l}\text{Rounded to the nearest}\\ \text{standardized DHR}\\ \text{given in Table 18.}\end{array}$$

and

$$DHR_{max}=\left\{\begin{array}{ll}2\cdot\dot{Q}_h^k(47)\cdot\left[\frac{65-T_{OD}}{60}\right], & \text{for Regions I, II, III, IV, \& VI}\\ 2\cdot 2\cdot\dot{Q}_h^k(47), & \text{for Region V}\end{array}\right\}\begin{array}{l}\text{Rounded to the nearest}\\ \text{standardized DHR}\\ \text{given in Table 18.}\end{array}$$

where $\dot{Q}_h^k(47)$ is expressed in units of Btu/h and otherwise defined as follows:

1. For a single-speed heat pump tested as per Section 3.6.1, $\dot{Q}_h^k(47)=\dot{Q}_h^k(47)$, the space heating capacity determined from the *H1* Test.

2. For a variable-speed heat pump, a Section 3.6.2 single-speed heat pump, or a two-capacity heat pump not covered by item 3, $\dot{Q}_h^k(47)=\dot{Q}_h^{k=2}(47)$, the space heating capacity determined from the $H1_N$ Test.

3. For two-capacity heat pumps that are designed to operate exclusively, via an equipment lockout feature, at low compressor capacity when space cooling while using both high and low capacities when space heating, $\dot{Q}_h^k(47)=\dot{Q}_h^k(47)$, the space heating capacity determined from the $H1_n$ Test.

If the optional $H1_N$ Test is conducted on a variable-speed heat pump, the manufacturer has the option of defining $\dot{Q}_h^k(47)$ as specified above in item 2 or as $\dot{Q}_h^k(47)=\dot{Q}_h^{k=N}(47)$, the space heating capacity determined from the $H1_N$ Test.

TABLE 18.—STANDARDIZED DESIGN HEATING REQUIREMENTS (BTU/H)

5,000	25,000	50,000	90,000
10,000	30,000	60,000	100,000
15,000	35,000	70,000	110,000
20,000	40,000	80,000	130,000

4.2.1 Additional steps for calculating the HSPF of a heat pump having a single-speed compressor that was tested with a fixed-speed indoor fan installed, a constant-air-volume-rate indoor fan installed, or with no indoor fan installed.

$$\frac{e_h(T_j)}{N} = \frac{X(T_j)\cdot \dot{E}_h(T_j)\cdot \delta(T_j)}{PLF_J}\cdot\frac{n_j}{N} \qquad (4.2.1\text{-}1)$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - \left[X(T_j)\cdot \dot{Q}_h(T_j)\cdot \delta(T_j)\right]}{3.413\,\frac{Btu/h}{W}}\cdot\frac{n_j}{N} \qquad (4.2.1\text{-}2)$$

where,

$$X(T_j) = \left\{\begin{array}{c} BL(T_j)/\dot{Q}_h\cdot(T_j) \\ \text{or} \\ 1 \end{array}\right\}$$

whichever is less; the heating mode load factor for temperature bin$_j$, dimensionless.

$\dot{Q}_h(T_j)$ = the space hearing capacity of the heat pump when operating at outdoor temperature T_j, Btu/h.

$\dot{E}_h(T_j)$ = the electrical power consumption of the heat pump when operating at outdoor temperature T_j, W.

$\delta(T_j)$ = the heat pump low temperature cut-out factor, dimensionless.

$PFL_j = 1 - C_{D>}{}^h \cdot [1 - X(T_j)]$, the part load factor, dimensionless.

Use Equation 4.2–2 to determine $BL(T_j)$.

Obtain fractional bin hours for the heating season, n_j/N, from Table 17. If the optional *H1C* Test described in Section 3.6.1 is not conducted, set the heating mode cyclic degradation coefficient, $C_D{}^h$, to the default value specified in Section 3.8.1. If this optional test is conducted, set $C_D{}^h$ to the lower of:

a. The value calculated according to Section 3.8.1 or

b. The Section 3.8.1 default value of 0.25.

Determine the low temperature cut-out factor using,

$$\delta(T_j) = \begin{cases} 0, \text{ if } T_j \le T_{off} \text{ or } \dfrac{\dot{Q}_h(T_j)}{3.413\cdot \dot{E}_h(T_j)} < 1 \\ 1/2, \text{ if } T_{off} < T_j \le T_{on} \text{ and } \dfrac{\dot{Q}_h(T_j)}{3.413\cdot \dot{E}_h(T_j)} \ge 1 \\ 1, \text{ if } T_j > T_{on} \text{ and } \dfrac{\dot{Q}_h(T_j)}{3.413\cdot \dot{E}_h(T_j)} \ge 1 \end{cases} \qquad (4.2.1\text{-}3)$$

where,

T_{off} = the outdoor temperature when the compressor is automatically shut off, °F. (If no such temperature exists, T_j is always greater than T_{off} and T_{on}).

T_{on} = the outdoor temperature when the compressor is automatically turned back on, if applicable, following an automatic shut-off, °F.

For non-defrost heat pumps covered under Section 3.6.1.1, determine its space heating capacity, $\dot{Q}_h(T_j)$, and the electrical power consumption, $\dot{E}_h(T_j)$, as specified in Section 4.2.1.1. For heat pumps having a heat comfort controller that are covered under Section 3.6.1.2, determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ as specified in Section 4.2.1.2. For all other heat pumps covered under Section 4.2.1 (and Section 3.6.1), calculate $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ using,

$$\dot{Q}_h(T_j) = \begin{cases} \dot{Q}_h(17) + \dfrac{\left[\dot{Q}_h(47) - \dot{Q}_h(17)\right]\cdot(T_j - 17)}{47 - 17}, \text{ if } T_j \ge 45\,^\circ\text{F or } T_j \le 17\,^\circ\text{F} \\ \dot{Q}_h(17) + \dfrac{\left[\dot{Q}_h(35) - \dot{Q}_h(17)\right]\cdot(T_j - 17)}{35 - 17}, \text{ if } T_j \ge 17\,^\circ\text{F} < T_j < 45\,^\circ\text{F} \end{cases} \qquad (4.2.1\text{-}4)$$

$$\dot{E}_h(T_j) = \begin{cases} \dot{E}_h(17) + \dfrac{\left[\dot{E}_h(47) - \dot{E}_h(17)\right]\cdot(T_j - 17)}{47 - 17}, \text{ if } T_j \ge 45\,^\circ\text{F or } T_j \le 17\,^\circ\text{F} \\ \dot{E}_h(17) + \dfrac{\left[\dot{E}_h(35) - \dot{E}_h(17)\right]\cdot(T_j - 17)}{35 - 17}, \text{ if } 17\,^\circ\text{F} < T_j < 45\,^\circ\text{F} \end{cases} \qquad (4.2.1\text{-}5)$$

where
$\dot{Q}_h(47)$ and $\dot{E}_h(47)$ are determined from the *H1* Test and calculated and as specified in Section 3.7; $\dot{Q}_h(35)$ and $\dot{E}_h(35)$ are determined from the *H2* Test and calculated as specified in Section 3.9.1; and $\dot{Q}_h(17)$ and $\dot{E}_h(17)$ are determined from the *H3* Test and calculated as specified in Section 3.10.

4.2.1.1 *Space heating capacity and the electrical power consumption calculations for a non-defrost heat pump.* Calculate the space heating capacity, $\dot{Q}_h(T_j)$, and the electrical power consumption, $\dot{E}_h(T_j)$, for a non-defrost heat pump covered under Section 3.6.1.1 using,

$$\dot{Q}_h\left(T_j\right) = \dot{Q}_h(47) + \left[\dot{Q}_h(62) - \dot{Q}_h(47)\right] \cdot \frac{\left(T_j - 47\right)}{62 - 47}$$

$$\dot{E}_h\left(T_j\right) = \dot{E}_h(47) + \left[\dot{E}_h(62) - \dot{E}_h(47)\right] \cdot \frac{\left(T_j - 47\right)}{62 - 47}$$

where
$\dot{Q}_h(62)$ and $\dot{E}_h(62)$ are determined from the *H0* Test, $\dot{Q}_h(47)$ and $\dot{E}_h(47)$ are determined from the H1 Test, and all four quantities are calculated as specified in Section 3.7. The low temperature cut-out factor, (T_j), must be greater than or equal to 37 °F, in accordance with Section 3.6.1.1.

4.2.1.2 *Space heating capacity and the electrical power consumption calculations for a heat pump having a heat comfort controller.* Calculate the space heating capacity and electrical power of the heat pump without the heat comfort controller being active as specified in Section 4.2.1 (Equations 4.2.1–4 and 4.2.1–5) for each outdoor bin temperature, T_j, that is listed in Table 17. Denote these capacities and electrical powers by using the subscript ''hp'' instead of ''h.'' Calculate the mass flow rate (expressed in pounds-mass of dry air per hour) and the specific heat of the indoor air (expressed in Btu/lbm$_{da}$ · °F) from the results of the *H1* Test using:

$$\dot{m}_{da} = \overline{\dot{V}}_s \cdot 0.075 \frac{\text{lbm}_{da}}{\text{ft}^3} \cdot \frac{60\ \text{min}}{\text{hr}} = \frac{\overline{\dot{V}}_{mx}}{v'_n \cdot \left[1 + W_n\right]} \cdot \frac{60\ \text{min}}{\text{hr}} = \frac{\dot{V}_{mx}}{v_n} \cdot \frac{60\ \text{min}}{\text{hr}}$$

$$C_{p,da} = 0.24 + 0.444 \cdot W_n$$

where,

$$\overline{\dot{V}}_s,\ \overline{\dot{V}}_{mx},\ v'_n\left(\text{or } v_n\right),\ \text{and } W_n$$

are defined following Equation 3–1. For each outdoor bin temperature listed in Table 17, calculate the nominal temperature of the air leaving the heat pump condenser coil using,

$$T_o\left(T_j\right) = 70\ ^\circ\text{F} + \frac{\dot{Q}_{hp}\left(T_j\right)}{\dot{m}_{da} \cdot C_{p,da}}.$$

For outdoor bin temperatures where $T_o(T_j)$ is equal to or greater than T_{CC}, the maximum supply temperature determined according to Section 3.1.9, determine $\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$ as specified in Section 4.2.1 [i.e., $\dot{Q}_h(T_j) = \dot{Q}_{hp}(T_j)$ and $\dot{E}_h(T_j) = E_{hp}(T_j)$].

For outdoor bin temperatures where $T_o(T_j) < T_{CC}$, $\dot{Q}_h(Tj) = \dot{Q}_{hp}(T_j) + \dot{Q}_{CC}(T_j)$

$$\dot{E}_h\left(T_j\right) = \dot{E}_{hp}\left(T_j\right) + \dot{E}_{CC}\left(T_j\right)$$

where,

$$\dot{Q}_{CC}\left(T_j\right) = \dot{m}_{da} \cdot C_{p,da} \cdot \left[T_{CC} - T_o\left(T_j\right)\right]$$

$$\dot{E}_{CC}\left(T_j\right) = \frac{\dot{Q}_{CC}\left(T_j\right)}{3.413 \frac{\text{Btu}}{\text{W} \cdot \text{h}}}.$$

Calculate the *HSPF* of a heat pump having a heat comfort controller as specified in Section 4.2.1 with the exception of using the space heating capacity and electrical power given above [$\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$] for the calculations at each outdoor bin temperature.

4.2.2 *Additional steps for calculating the HSPF of a heat pump having a single-speed compressor and a variable-speed, variable-air-volume-rate indoor fan.* The manufacturer must provide information about how the indoor air volume rate or the indoor fan speed varies over the outdoor temperature range of 65 °F to –23 °F. Calculate the quantities

$$\frac{e_h\left(T_j\right)}{N} \text{ and } \frac{RH_h\left(T_j\right)}{N}$$

in Equation 4.2–1 as specified in Section 4.2.1 with the exception of replacing references to the H1C Test and Section 3.6.1 with the *H1C$_1$* Test and Section 3.6.2. In addition, evaluate the space heating capacity and electrical power consumption of the heat pump [$\dot{Q}_h(T_j)$ and $\dot{E}_h(T_j)$] using,

$$\dot{Q}_h(T_j) = \dot{Q}_h^{k=1}(T_j) + \frac{\dot{Q}_h^{k=2}(T_j) - \dot{Q}_h^{k=1}(T_j)}{FP_h^{k=2} - FP_h^{k=1}} \cdot \left[FP_h(T_j) - FP_h^{k=1}\right]$$

$$\dot{E}_h(T_j) = \dot{E}_h^{k=1}(T_j) + \frac{\dot{E}_h^{k=2}(T_j) - \dot{E}_h^{k=1}(T_j)}{FP_h^{k=2} - FP_h^{k=1}} \cdot \left[FP_h(T_j) - FP_h^{k=1}\right]$$

where the space heating capacity and electrical power consumption at both low capacity (k=1) and high capacity (k=2) at outdoor temperature T_j are determined using,

$$\dot{Q}_h^k(T_j) = \begin{cases} \dot{Q}_h^k(17) + \dfrac{\left[\dot{Q}_h^k(47) - \dot{Q}_h^k(17)\right] \cdot (T_j - 17)}{47 - 17}, & \text{if } T_j \geq 45\ ^\circ\text{F or } T_j \leq 17\ ^\circ\text{F} \\ \dot{Q}_h^k(17) + \dfrac{\left[\dot{Q}_h^k(35) - \dot{Q}_h^k(17)\right] \cdot (T_j - 17)}{35 - 17}, & \text{if } 17\ ^\circ\text{F} < T_j < 45\ ^\circ\text{F} \end{cases} \quad (4.2.2\text{-}1)$$

$$\dot{E}_h^k(T_j) = \begin{cases} \dot{E}_h^k(17) + \dfrac{\left[\dot{E}_h^k(47) - \dot{E}_h^k(17)\right] \cdot (T_j - 17)}{47 - 17}, & \text{if } T_j \geq 45\ ^\circ\text{F or } T_j \leq 17\ ^\circ\text{F} \\ \dot{E}_h^k(17) + \dfrac{\left[\dot{E}_h^k(35) - \dot{E}_h^k(17)\right] \cdot (T_j - 17)}{35 - 17}, & \text{if } 17\ ^\circ\text{F} < T_j < 45\ ^\circ\text{F} \end{cases} \quad (4.2.2\text{-}2)$$

For units where indoor fan speed is the primary control variable, $FP_h^{k=1}$ denotes the fan speed used during the required $H1_1$ and $H3_1$ Tests (see Table 10), $FP_h^{k=2}$ denotes the fan speed used during the required $H1_2$, $H2_2$, and $H3_2$ Tests, and $FP_h(T_j)$ denotes the fan speed used by the unit when the outdoor temperature equals T_j. For units where indoor air volume rate is the primary control variable, the three FP_h's are similarly defined only now being expressed in terms of air volume rates rather than fan speeds. Determine $\dot{Q}_h^{k=1}$ (47) and $\dot{E}_h^{k=1}$ (47) from the $H1_1$ Test, and $\dot{Q}_h^{k=2}$ (47) and $\dot{E}_h^{k=2}$ (47) from the $H1_2$ Test. Calculate all four quantities as specified in Section 3.7. Determine $\dot{Q}_h^{k=1}$ (35) and $\dot{E}_h^{k=1}$ (35) as specified in Section 3.6.2; determine $\dot{Q}_h^{k=2}$ (35) and $\dot{E}_h^{k=2}$ (35) from the $H2_2$ Test and the calculation specified in Section 3.9. Determine $\dot{Q}_h^{k=1}$ (17) and $\dot{E}_h^{k=1}$ (17) from the $H3_1$ Test, and $\dot{Q}_h^{k=2}$ (17) and $\dot{E}_h^{k=2}$ (17) from the $H3_2$ Test. Calculate all four quantities as specified in Section 3.10.

4.2.3 *Additional steps for calculating the HSPF of a heat pump having a two-capacity compressor.* The calculation of the Equation 4.2–1 quantities

$$\frac{e_h(T_j)}{N}$$

and

$$\frac{RH_c(T_j)}{N}$$

differs depending upon whether the heat pump would operate at low capacity (Section 4.2.3.1), cycle between low and high capacity (Section 4.2.3.2), or operate at high capacity (Sections 4.2.3.3 and 4.2.3.4) in responding to the building load. For heat pumps that lock out high and/or low capacity operation at low outdoor temperatures, the manufacturer must supply information regarding the cutoff temperature(s) so that you can select the appropriate equations.

a. Evaluate the space heating capacity and electrical power consumption of the heat pump when operating at low compressor capacity and outdoor temperature T_j using,

$$\dot{Q}_h^{k=1}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(47) + \dfrac{\left[\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)\right] \cdot (T_j - 47)}{62 - 47}, & \text{if } T_j \geq 40\ ^\circ\text{F} \\ \dot{Q}_h^{k=1}(17) + \dfrac{\left[\dot{Q}_h^{k=1}(35) - \dot{Q}_h^{k=1}(17)\right] \cdot (T_j - 17)}{35 - 17}, & \text{if } 17\ ^\circ\text{F} \leq T_j \leq 40\ ^\circ\text{F} \\ Q_h^{k=1}(17) + \dfrac{\left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(17)\right] \cdot (T_j - 17)}{47 - 17}, & \text{if } T_j < 17\ ^\circ\text{F} \end{cases}$$

$$\dot{E}_h^{k=1}(T_j) = \begin{cases} \dot{E}_h^{k=1}(47) + \dfrac{\left[\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)\right] \cdot (T_j - 47)}{62 - 47}, & \text{if } T_j \geq 40\ ^\circ\text{F} \\ \dot{E}_h^{k=1}(17) + \dfrac{\left[\dot{E}_h^{k=1}(35) - \dot{E}_h^{k=1}(17)\right] \cdot (T_j - 17)}{35 - 17}, & \text{if } 17\ ^\circ\text{F} \leq T_j < 40\ ^\circ\text{F} \\ \dot{E}_h^{k=1}(17) + \dfrac{\left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(17)\right] \cdot (T_j - 17)}{47 - 17}, & \text{if } T_j < 17\ ^\circ\text{F} \end{cases}$$

b. Evaluate the space heating capacity and electrical power consumption [$\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$] of the heat pump when operating at high compressor capacity and outdoor temperature T_j by solving Equations 4.2.2–1 and 4.2.2–2, respectively, for k=2. Determine $\dot{Q}_h^{k=1}$ (62) and $\dot{E}_h^{k=1}$ (62) from the $H0_1$ Test, $\dot{Q}_h^{k=1}$ (47) and $\dot{E}_h^{k=1}$ (47) from the $H1_1$ Test, and $\dot{Q}_h^{k=2}$ (47) and $\dot{E}_h^{k=2}$ (47) from the $H1_2$ Test. Calculate all six quantities as specified in Section 3.7. Determine $\dot{Q}_h^{k=2}$ (35) and $\dot{Q}_h^{k=2}$ (35) from the $H2_2$ Test and, if required as described in Section 3.6.3, determine $\dot{Q}_h^{k=1}$ (35) and $\dot{E}_h^{k=1}$ (35) from the $H2_1$ Test. Calculate the required 35 °F quantities as specified in Section 3.9. Determine $\dot{Q}_h^{k=2}$ (17) and $\dot{E}_h^{k=2}$ (17) and from the $H3_2$ Test and, if required as described in Section 3.6.3, determine $\dot{Q}_h^{k=1}$ (17) and $\dot{E}_h^{k=1}$ (17) from the $H3_1$ Test. Calculate the required 17 °F quantities as specified in Section 3.10.

4.2.3.1 Steady-state space heating capacity when operating at low compressor capacity is greater than or equal to the building heating load at temperature T_j, $\dot{Q}_h^{k=1}(T_j) \geq BL(T_j)$.

$$\frac{e_h(T_j)}{N} = \frac{X^{k=1}(T_j)\cdot \dot{E}_h^{k=1}(T_j)\cdot \delta'(T_j)}{PLF_j}\cdot\frac{n_j}{N} \qquad (4.2.3\text{-}1)$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j)\cdot\left[1-\delta'(T_j)\right]}{3.413\frac{Btu/h}{W}}\cdot\frac{n_j}{N} \qquad (4.2.3\text{-}2)$$

where,

$X^{k=1} = BL(T_j)/\dot{Q}_h^{k=1}(T_j)$, the heating mode low capacity load factor for temperature bin j, dimensionless.

$PLF_j = 1 - C_D{}^h \cdot [1 - X^{k=1}(T_j)]$, the part load factor, dimensionless.

$\delta'(T_j$ = the low temperature cutoff factor, dimensionless.

If the optional $H0C_1$ Test described in Section 3.6.3 is not conducted, set the heating mode cyclic degradation coefficient, $C_D{}^h$, to the default value specified in Section 3.8.1. If this optional test is conducted, set $C_D{}^h$ to the lower of:

a. The value calculated according to Section 3.8.1 or

b. The Section 3.8.1 default value of 0.25.

Determine the low temperature cut-out factor using,

$$\delta'\left(T_j\right) = \begin{cases} 0, & \text{if } T_j \leq T_{off} \\ 1/2, & \text{if } T_{off} < T_j \leq T_{on} \\ 1, & \text{if } T_j > T_{on} \end{cases} \qquad (4.2.3\text{-}3)$$

where t_{off} and T_{on} are defined in Section 4.2.1. Use the calculations given in Section 4.2.3.3, and not the above, if:

(1) the heat pump locks out low capacity operation at low outdoor temperatures and

(2) T_j is below this lockout threshold temperature.

4.2.3.2 Heat pump alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building heating load at a temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

Calculate $\frac{RH(T_j)}{N}$ using Equation 4.2.3-2. Evaluate $\frac{e_h(T_j)}{N}$ using,

$$\frac{e_h(T_j)}{N} = \left[X^{k=1}(T_j)\cdot \dot{E}_h^{k=1}(T_j) + X^{k=2}(T_j)\cdot \dot{E}_h^{k=2}(T_j)\right]\cdot \delta'(T_j)\cdot\frac{n_j}{N}$$

where,

$$X^{k=1}(T_j) = \frac{\dot{Q}_h^{k=2}(T_j) - BL(T_j)}{\dot{Q}_h^{k=2}(T_j) - \dot{Q}_h^{k=1}(T_j)}.$$

$X^{k=2}(T_j)$ $1 - X^{k=1}(T_j)$, the heating mode, high capacity load factor for temperature bin j, dimensionless.

Determine the low temperature cut-out factor, $\delta(T)$, using Equation 4.2.3–3.

4.2.3.3 Heat pump only operates at high (k=2) compressor capacity at temperature Tj and its capacity is greater than the building heating load, $BL(T_j) < \dot{Q}_h^{k=2}(T_j)$. This Section applies to units that lock out low compressor capacity operation at low outdoor temperatures. Calculate

$$\frac{RH(T_j)}{N}$$

using Equation 4.2.3–2. Evaluate

$$\frac{e_h(T_j)}{N}$$

using,

$$\frac{e_h(T_j)}{N} = \frac{X^{k=2}(T_j)\cdot \dot{E}_h^{k=2}(T_j)\cdot \delta'(T_j)}{PLF_j}\cdot\frac{n_j}{N}$$

where,

$X^{k=2}(T_j) = BL(T_j) / \dot{Q}_h^{k=2}(T_j)$.

$PLF_j = 1 - C_D^h \cdot [1 - X^{k=2}(T_j)]$.

When evaluating the above equation for part load factor at high capacity, use the same value of C_D^h as used in the Section 4.2.3.1 calculations. Determine the low temperature cut-out factor, $\delta(T_j)$, using Equation 4.2.3–3.

4.2.3.4 *Heat pump must operate continuously at high* (k=2) *compressor capacity at temperature T_j, $BL(T_j)$.*

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=2}(T_j)\cdot\delta''(T_j)\cdot\frac{n_j}{N}$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - \left[\dot{Q}_h^{k=2}(T_j)\cdot\delta''(T_j)\right]}{3.413\,\frac{Btu/h}{W}}\cdot\frac{n_j}{N}$$

where,

$$\delta''(T_j) = \begin{cases} 0, \text{ if } T_j \le T_{off} \text{ or } \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413\cdot\dot{E}_h^{k=2}(T_j)} < 1 \\ 1/2, \text{ if } T_{off} < T_j \le T_{on} \text{ and } \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413\cdot\dot{E}_h^{k=2}(T_j)} \ge 1 \\ 1, \text{ if } T_j > T_{on} \text{ and } \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413\cdot\dot{E}_h^{k=2}(T_j)} \ge 1 \end{cases}$$

4.2.4 Additional steps for calculating the HSPF of a heat pump having a variable-speed compressor. Calculate HSPF using Equation 4.2–1. Evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor speed and outdoor temperature T_j using,

$$\dot{Q}_h^{k=1}(T_j) = \dot{Q}_h^{k=1}(47) + \frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62-47}\cdot(T_j - 47) \qquad (4.2.4\text{-}1)$$

$$\dot{E}_h^{k=1}(T_j) = \dot{E}_h^{k=1}(47) + \frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62-47}\cdot(T_j - 47) \qquad (4.2.4\text{-}2)$$

where $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ are determined from the $H0_1$ Test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_1$ Test, and all four quantities are calculated as specified in Section 3.7. Evaluate the space heating capacity, $\dot{Q}_h^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=2}(T_j)$, of the heat pump when operating at maximum compressor speed and outdoor temperature T_j by solving Equations 4.2.2–1 and 4.2.2–2, respectively, for k=2. Determine the Equation 4.2.2–1 quantities $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ from the $H1_2$ Test and the calculations specified in Section 3.7. Determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ Test and the calculations specified in Section 3.9 or, if the $H2_2$ Test is not conducted, by conducting the calculations specified in Section 3.6.4. Determine $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ Test and the calculations specified in Section 3.10. Calculate the space heating capacity, $\dot{Q}_h^{k=i}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at outdoor temperature T_j and the intermediate compressor speed used during the Section 3.6.4 $H2_V$ Test using,

$$\dot{Q}_h^{k=v}(T_j) = \dot{Q}_h^{k=v}(35) + M_Q\cdot(T_j - 35) \qquad (4.2.4\text{-}3)$$

$$\dot{E}_h^{k=v}(T_j) = \dot{E}_h^{k=v}(35) + M_E\cdot(T_j - 35) \qquad (4.2.4\text{-}4)$$

where $\dot{Q}_h^{k=v}(35)$ and $\dot{E}_h^{k=v}(35)$ are determined from the $H2_V$ Test and calculated as specified in Section 3.9. Approximate the slopes of the $k=v$ intermediate speed heating capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62-47}\cdot\left(1-N_Q\right)\right] + \left[N_Q \cdot \frac{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=2}(17)}{35-17}\right]$$

$$M_E = \left[\frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62-47}\cdot\left(1-N_E\right)\right] + \left[N_E \cdot \frac{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=2}(17)}{35-17}\right]$$

where,

$$N_Q = \frac{\dot{Q}_h^{k=V}(35) - \dot{Q}_h^{k=1}(35)}{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=1}(35)}, \text{ and}$$

$$N_E = \frac{\dot{E}_h^{k=V}(35) - \dot{E}_h^{k=1}(35)}{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=1}(35)}.$$

Use Equations 4.2.4–1 and 4.2.4–2, respectively, to calculate $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$.

The calculation of Equation 4.2–1 quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

differs depending upon whether the heat pump would operate at minimum speed (Section 4.2.4.1), operate at an intermediate speed (Section 4.2.4.2), or operate at maximum speed (Section 4.2.4.3) in responding to the building load.

4.2.4.1 Steady-state space heating capacity when operating at minimum compressor speed is greater than or equal to the building heating load at temperature T_j, $\dot{Q}_h^{k=1}(T_j) \geq BL(T_j)$. Evaluate the Equation 4.2–1 quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

as specified in Section 4.2.3.1. Except now use Equations 4.2.4–1 and 4.2.4–2 to evaluate $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$, respectively, and replace Section 4.2.3.1 references to ''low capacity'' and Section 3.6.3 with ''minimum speed'' and Section 3.6.4. Also, the last sentence of Section 4.2.3.1 does not apply.

4.2.4.2 Heat pump operates at an intermediate compressor speed (k=i) in order to match the building heating load at a temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=2}(T_j)$. Calculate

$$\frac{RH(T_j)}{N}$$

using Equation 4.2.3–2 while evaluating

$$\frac{e_h(T_j)}{N}$$

using,

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=i}(T_j)\cdot\delta'(T_j)\cdot\frac{n_j}{N}$$

where,

$$\dot{E}_h^{k=i}(T_j) = \frac{\dot{Q}_h^{k=i}(T_j)}{3.413\frac{Btu/h}{W}\cdot COP_h^{k=i}(T_j)}$$

and $\delta(T_j)$ is evaluated using Equation 4.2.3–3 while,

$\dot{Q}_h^{k=i}(T_j) = BL(T_j)$, the space heating capacity delivered by the unit in matching the building load at temperature T_j, Btu/h. The matching occurs with the heat pump operating at compressor speed $k=i$.

$COP_h^{k=i}(T_j)$ = the steady-state coefficient of performance of the heat pump when operating at compressor speed $k=i$ and temperature T_j, dimensionless.

For each temperature bin where the heat pump operates at an intermediate compressor speed, determine $COP_h^{k=i}(T_j)$ using,

$$COP_h^{k=i}(T_j) = A + B\cdot T_j + C\cdot T_j^2.$$

For each heat pump, determine the coefficients A, B, and C by conducting the following calculations once:

$$D = \frac{T_3^2 - T_4^3}{T_{vh}^2 - T_4^2}$$

$$B = \frac{COP^{k=2}(T_4) - COP^{k=1}(T_3) - D\cdot\left[COP^{k=2}(T_4) - COP^{k=v}(T_{vh})\right]}{T_4 - T_3 - D\cdot(T_4 - T_{vh})}$$

$$C = \frac{COP^{k=2}(T_4) - COP^{k=1}(T_3) - B\cdot(T_4 - T_3)}{T_4^2 - T_3^2}$$

$$A = COP^{k=2}(T_4) - B\cdot T_4 - C\cdot T_4^2.$$

where,

T_3 = the outdoor temperature at which the heat pump, when operating at minimum compressor speed, provides a space heating capacity that is equal to the building load $[\dot{Q}_h^{k=1}(T_3) = BL(T_3)]$, °F. Determine T_3 by equating Equations 4.2.4–1 and 4.2–2 and solving for outdoor temperature.

T_{vh} = the outdoor temperature at which the heat pump, when operating at the intermediate compressor speed used during the Section 3.6.4 $H2_V$ Test, provides a space heating capacity that is equal to the building load $[\dot{Q}_h^{k=v}(T_{vh}) = BL(T_{vh})]$, °F. Determine T_{vh} by equating Equations 4.2.4–3 and 4.2–2 and solving for outdoor temperature.

T_4 = the outdoor temperature at which the heat pump, when operating at maximum compressor speed, provides a space heating capacity that is equal to the building load $[\dot{Q}_h^{k=2}(T_4)] = BL(T_4)]$, °F. Determine T_4 by equating Equations by 4.2.2–1 ($k=2$) and 4.2–2 and solving for outdoor temperature.

$$COP^{k=1}(T_3) = \frac{\dot{Q}_h^{k=1}(T_3) \quad \left[\text{Eqn. 4.2.4-1, substituting } T_3 \text{ for } T_j\right]}{3.413\frac{\text{Btu/h}}{\text{W}} \cdot \dot{E}_h^{k=1}(T_3) \quad \left[\text{Eqn. 4.2.4-2, substituting } T_3 \text{ for } T_j\right]}$$

$$COP^{k=v}(T_{vh}) = \frac{\dot{Q}_h^{k=v}(T_{vh}) \quad \left[\text{Eqn. 4.2.4-3, substituting } T_{vh} \text{ for } T_j\right]}{3.413\frac{\text{Btu/h}}{\text{W}} \cdot \dot{E}_h^{k=v}(T_{vh}) \quad \left[\text{Eqn. 4.2.4-4, substituting } T_{vh} \text{ for } T_j\right]}$$

$$COP^{k=2}(T_4) = \frac{\dot{Q}_h^{k=2}(T_4) \quad \left[\text{Eqn. 4.2.2-1, substituting } T_4 \text{ for } T_j\right]}{3.413\frac{\text{Btu/h}}{\text{W}} \cdot \dot{E}_h^{k=2}(T_4) \quad \left[\text{Eqn. 4.2.2-2, substituting } T_4 \text{ for } T_j\right]}.$$

4.2.4.3 *Heat pump must operate continuously at maximum (k=2) compressor speed at temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$.* Evaluate the Equation 4.2–1 quantities

$$\frac{e_h(T_j)}{N} \text{ and } \frac{RH(T_j)}{N}$$

as specified in Section 4.2.3.4 with the understanding that $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ correspond to maximum compressor speed operation and are derived from the results of the specified Section 3.6.4 tests.

4.3 *Calculations of the Actual and Representative Regional Annual Performance Factors for Heat Pumps.*

4.3.1 *Calculation of actual regional annual performance factors (APF_A) for a particular location and for each standardized design heating requirement.*

$$APF_A = \frac{CLH_A \cdot \dot{Q}_c^k(95) + HLH_A \cdot DHR \cdot C}{\frac{CLH_A \cdot \dot{Q}_c^k(95)}{SEER} + \frac{HLH_A \cdot DHR \cdot C}{HSPF}}$$

where,

CLH_A = the actual cooling hours for a particular location as determined using the map given in Figure 3, hr.

$\dot{Q}_c^k(95)$= the space cooling capacity of the unit as determined from the A or A_2 Test, whichever applies, Btu/h.

HLH_A = the actual heating hours for a particular location as determined using the map given in Figure 2, hr.

DHR = the design heating requirement used in determining the HSPF; refer to Section 4.2 and Definition 1.21, Btu/h.

C = defined in Section 4.2 following Equation 4.2–2, dimensionless.

SEER = the seasonal energy efficiency ratio calculated as specified in Section 4.1, Btu/W·h.

HSPF = the heating seasonal performance factor calculated as specified in Section 4.2 for the generalized climatic region that includes the particular location of interest (see Figure 2), Btu/W·h; the *HSPF* should preferably correspond to the actual design heating requirement (*DHR*) if known. But it may correspond to one of the standardized design heating requirements referenced in Section 4.2.

4.3.2 *Calculation of representative regional annual performance factors (APF_R) for each generalized climatic region and for each standardized design heating requirement*

$$APF_R = \frac{CLH_R \cdot \dot{Q}_c^k(95) + HLH_R \cdot DHR \cdot C}{\frac{CLH_R \cdot \dot{Q}_c^k(95)}{SEER} + \frac{HLH_R \cdot DHR \cdot C}{HSPF}}$$

where,

CLH_R = the representative cooling hours for each generalized climatic region, Table 19, hr.

HLH_R = the representative heating hours for each generalized climatic region, Table 19, hr.

HSPF = the heating seasonal performance factor calculated as specified in Section 4.2 for each generalized climatic region and for each standardized design heating requirement within each region, Btu/W·h.

The *SEER,* $\dot{Q}_c^k(95)$, *DHR,* and *C* are the same quantities as defined in Section 4.3.1. Figure 2 shows the generalized climatic regions. Table 18 lists standardized design heating requirements.

TABLE 19.—REPRESENTATIVE COOLING AND HEATING LOAD HOURS FOR EACH GENERALIZED CLIMATIC REGION

Region	CLH_R	HLH_R
I	2400	750
II	1800	1250
III	1200	1750
IV	800	2250
V	400	2750
VI	200	2750

4.4 *Rounding of SEER, HSPF, and APF for reporting purposes.* After calculating *SEER* according to Section 4.1, round it off as specified in subpart b, § 430.23(m)(3)(i) of the Code of Federal Regulations. Round Section 4.2 *HSPF* values and Section 4.3 *APF* values as per paragraphs (ii) and (iii), respectively, of Subpart B, § 430.23(m)(3) of the Code of Federal Regulations.

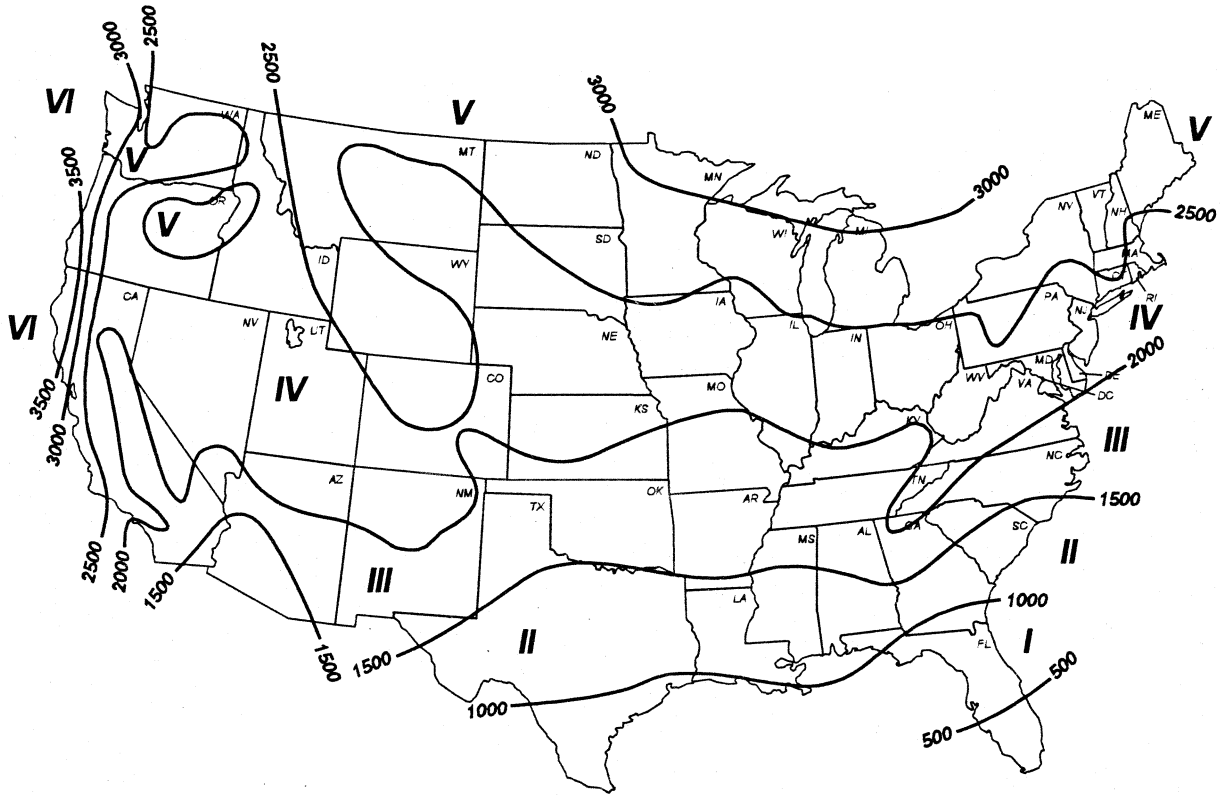

Figure 2 Heating Load Hours (HLH_A) for the United States

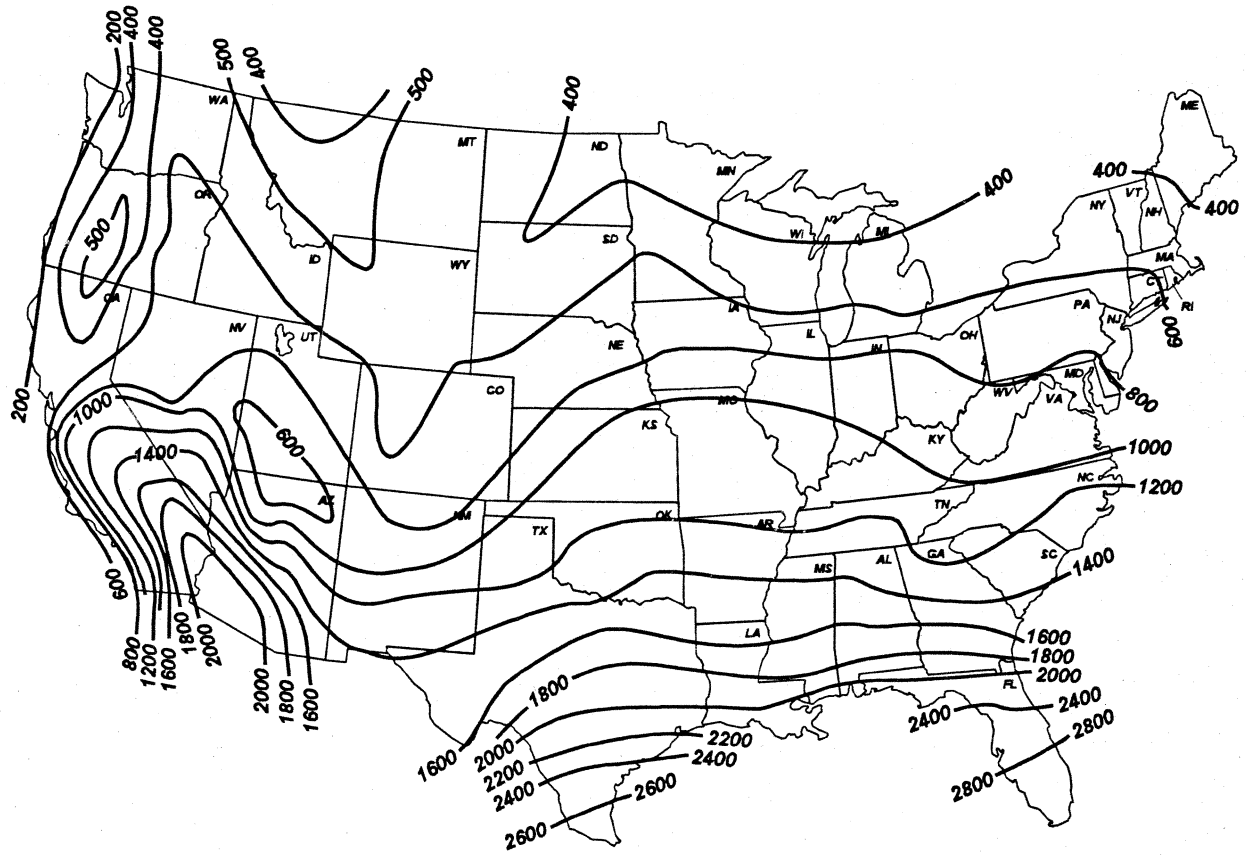

Figure 3 Cooling Load Hours (CLH_A) for the United States

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Federal Register

Monday,
January 22, 2001

Part III

Department of Education

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2001.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for FY 2001 competitions under three programs authorized by the Individuals with Disabilities Education Act (IDEA), as amended. The three programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (five priorities); (2) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (two priorities); and (3) Special Education—Technology and Media Services for Individuals with Disabilities (five priorities).

Goals 2000: Educate America Act

The Goals 2000: Education America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These priorities would address the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements: (a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice for each applicable priority, using the following standards:

• A ''page'' is 8.5″ x 11″ (on one side only) with one-inch margins (top, bottom, and sides).

• Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.

• If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Reasonable Accommodation: We will consider, and may fund, requests for additional funding above the maximum amounts indicated for each priority or focus as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The three programs in this announcement are included in the pilot project. If you are an applicant for a grant under any of the three programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

• Your participation is voluntary.

• You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.

• You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgment, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the program at: http://e-grants.ed.gov

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Research and Innovation To Improve Services and Results for Children With Disabilities [CFDA 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to: (a)

Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (b) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants: Under Absolute Priorities 1, 2, 3, and 5, and under focus area 2 of Absolute Priority 4, eligible applicants are State and local educational agencies, institutions of higher education (IHEs); other public agencies, private nonprofit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations. Under Absolute Priority 4, eligible applicants for focus areas 1 and 3 are limited to local educational agencies (LEAs), or consortia of LEAs with either IHEs or private nonprofit organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Grants are required to collaborate with other research institutes, centers, and studies and evaluations, supported by the Department throughout the course of the project.

Priority: Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority 1—Directed Research Projects (84.324D)

This priority provides support for projects that advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services. This includes professionals who work with children with disabilities in regular education environments and natural environments. Under this priority, projects must support innovation, development, exchange of information, and use of advancements in knowledge and practice. If the project maintains a web site, it must include relevant information and documents in an accessible form. Projects must (1) use rigorous quantitative or qualitative research and evaluation methods and (2) communicate appropriately with target audiences.

Focus 1—Inclusion of Students With Disabilities in Large-Scale Assessment and Accountability Programs

Recent laws and policies at Federal and State levels require the participation of students with disabilities in large-scale assessment and accountability programs to help ensure that students with disabilities achieve to high standards and have the fullest possible range of educational opportunities. Progress has been made in solving the technical, logistical, and policy obstacles to achieving this participation. However, continued progress is needed, particularly related to young children and children with low incidence disabilities taking regular assessments with or without accommodations.

Focus Area 1 supports projects that pursue systematic programs of applied research to either or both of the following: (a) Determine how State and local education agencies can best achieve the meaningful participation of students with disabilities in large-scale assessment and accountability programs; or (b) study the effects of State and local efforts to achieve this participation.

We intend to make approximately 3 awards in Focus Area 1 of which two of these awards would focus on young children through the age 9 in regular assessments or students with low-incidence disabilities in regular assessments, or both.

Low incidence disabilities include a visual or hearing impairment or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive a free appropriate public education.

Focus 2—Instructional Interventions and Results for Children With Disabilities

The successful implementation of the IDEA Amendments of 1997 requires a strong emphasis on supports for children with disabilities to help them access the general education curricula. Research is needed to describe, test, and validate instructional practices that have the potential for generating positive results for children with disabilities as they strive to meet State and local standards and performance goals set for all students. The research must focus on children in preschool, elementary, middle, or high school.

Projects supported under Focus 2 must investigate one or more issues related to providing instruction in the general education curriculum for children with disabilities. These issues may include, but are not limited to:

(a) The relationship of instructional interventions to results in core subjects such as, language arts, mathematics, science, social studies, foreign language;

(b) Contextual variables that influence access to the general education curriculum for students with disabilities. Contextual variables include, for example, classroom design, relative role of regular educators and special educators, groupings, or management strategies; curricular design, delivery, or materials; and family and staff interaction;

(c) Instructional and curricular accommodations to ensure that students with disabilities have access to the general education curriculum; and

(d) The relationship of inclusive preschool practices and child-family transition practices to child development, readiness skills, and preparation for participation in the primary grades.

We intend to fund a total of nine (9) awards in Focus 2 and to fund:

- At least three (3) projects that address innovative instructional interventions and strategies in core subjects required for high school graduation (e.g., algebra or foreign language); and,
- At least three (3) projects that describe, test, and validate instructional practices that enhance appropriate access to and participation and progress in the general education curriculum for children with cognitive disabilities.

Focus 3—Gender and Special Education

The purpose of this focus area is to explore the influences of gender on special education referral, placement, and service provision for students with disabilities.

Males and females comprise equal proportions of the school-aged population; however, males account for approximately two-thirds of all students served in special education. In many cases, it is not clear if females are underidentified for special education, if males are overidentified, or if real differences exist in the prevalence of disability between males and females. The research to date has primarily addressed commonalities of students rather than differences based on gender.

Some additional facts regarding gender and disabilities include:

(a) Females with disabilities have more significant disabilities than their male peers at the time of referral;

(b) Females with disabilities have lower IQ scores than their male counterparts at the time of referral; and

(c) Post school outcomes for females with disabilities are significantly worse than their male peers with disabilities.

Little is known, however, about the different characteristics, treatment and experiences of males and females with disabilities. These differences are likely to be caused by a combination of factors.

Under this focus, a research project must pursue a systematic program of research that focuses on one or more issues related to gender and special education. The issues may include, but are not limited to:

(a) The differences that may exist in the prevalence of disabilities based on gender, and, if so, why those differences exist;

(b) The reasons for different outcomes and opportunities, (*e.g.,* employment, parenting, vocational education programs) for students with disabilities based on gender; and

(c) The factors that contribute to disproportionate representation of males and females in special education including (1) students' environmental, social, and learning experiences, and cultural and linguistic characteristics; (2) student or teacher behaviors and interactions; (3) teacher expectations and attitudes.

We intend to fund 3 awards in Focus 3.

Focus 4—Research To Improve Literacy Results for Children Who Are Unresponsive to Effective Classroom or Schoolwide Programs in Grades K–3

Recent reading research has focused on developing and validating strategies and interventions to ensure that children acquire literacy in regular education classroom settings by using effective classroom reading programs. These programs may include explicit and intensive instruction within or outside the classroom in small groups and, in the most difficult cases, with individualized one-on-one tutoring. The hope has been that all children would succeed in these circumstances; however, there are a small number of children who do not benefit at all from these interventions and who are at the highest risk for academic and social failure.

Effective learning and teaching strategies must also be found for these children. These strategies need to be based on the learning characteristics and needs of a child as well as reasonable expectations for the child. Projects supported under Focus 4 must—

(a) Identify the criteria used to decide that a child is unresponsive to interventions that are effective for most students;

(b) Identify and describe characteristics related to (1) the environmental, social, cultural, and English language learning factors each child may have experienced, and (2) the learning characteristics related to the literacy of each child who is unresponsive to reading programs to which a majority of children respond. Learning characteristics may include, but are not limited to, specific deficits in phonological awareness, inattentiveness and distractibility, motivation, language development, developmental delay, and IQ;

(c) Design processes for making decisions about how to target instruction that will be effective given the identified learning characteristics of the child;

(d) Document the progress of individual children toward meeting intervention goals, the fidelity of implementation of interventions, the qualifications of persons who make decisions and who implement interventions, the length and intensity of interventions, and the settings where the interventions take place; and

(e) Evaluate the expectations that were made for each child.

We intend to fund 3 awards in Focus 4.

Focus 5—Research To Improve Reading Comprehension Results for Children With Disabilities

In recent years, research has advanced our understanding of how skilled readers comprehend and how instructional strategies support children with learning disabilities to comprehend text. Comprehension is not merely a text-based process where meaning resides in the text and the role of the reader is to discover the meaning. To develop successful comprehension skills, many children with learning disabilities need an explicit instructional program that: (a) Teaches them how to access prior knowledge through strategies such as semantic mapping, think aloud sheets, *etc.;* (b) motivates and supports persistence on task, including expressions of a student's own thoughts when reading and writing, questioning the expert or inquiring, or using technology or grouping practices; and (c) teaches them cognitive and metacognitive strategies for reading with understanding, including how to monitor one's own progress through self-regulation, summarizing, generating questions, mnemonics, or imagery.

Under Focus 5, a project must pursue a systematic program of applied research that focuses on one or more issues related to improving reading comprehension results of children with learning disabilities related to reading. These issues include, but are not limited to:

(a) The types of effective comprehension instruction for children with learning disabilities in grades K–2, 3–5, and 6–8 inclusive;

(b) The components of particularly effective programs for children with learning disabilities, *e.g.,* the basal materials, supplemental or adapted materials, instructional strategies used by teachers, and how families may support the instructional program;

(c) The types of effective questioning strategies used by teachers, peers, and parents to encourage and develop comprehension skills; and

(d) The kinds of individualized instruction, grouping practices, instructional strategies, and curricula that improve comprehension and problem solving.

We intend to make approximately 3 awards in Focus 5.

Focus 6—Alternative Schools and Programs

Many school districts and States have worked to establish or renew a focus on alternative schools and programs for children who are at-risk of suspension and expulsion from school. While specific definitions of alternative schools and programs vary considerably, they are typically designed to address the needs of students who are at risk of educational failure related to poor academic performance, inconsistent teacher training, truancy, disruptive behavior, suspension, expulsion, or other similar risk factors, and whose needs cannot be well met in a regular or traditional school setting. OSEP is supporting a new fast response survey through the National Center for Educational Statistics that by summer 2001 will provide information from districts on alternative schools and programs. However, research on the universe of alternative schools and programs in operation is much needed. Further, while a number of U.S. Department of Education demonstration projects are developing effective alternative programs to reduce school suspensions and expulsions (see, http://www.ed.gov/offices/OESE/SDFS/altst__200.html), research on the delivery of specific services to, and outcomes for, students with disabilities in alternative schools and programs has been limited.

Projects supported under Focus 6 must investigate one or more of the following issues relating to alternative schools and programs serving students with disabilities:

(a) The variety among alternative schools and programs in terms of definition, type, number of students with and without disabilities served, organizational or governance structures used, and other demographic characteristics.

(b) The referral and identification process and procedures used to place students with disabilities in alternative schools and programs.

(c) Exit procedures, timelimits, and procedures for transition and return to previous school or other settings.

(d) Special education services available and delivered, and outcomes achieved.

(e) The extent to which alternative schools and programs are used as IDEA-required interim alternative educational settings and the distinguishing characteristics of those settings.

(f) Coordination of special services in alternative schools and programs.

Projects must involve a directed in-depth examination of a few selected alternative schools or programs or larger-scale broader surveys of many schools or programs.

We intend to make approximately 3 awards in Focus 6.

Focus 7—Research on Early Childhood Mental Health

The elements of early intervention practice that support the social and emotional development of young children with or at risk of disabilities, are as important as those that support linguistic and cognitive development. An expanding knowledge base in early childhood mental health documents the contribution of emotional, regulatory, and social development, environmental factors, and early relationships to later school success and to the prevention of emotional disturbance. Additional research is needed to document effective practices for identifying and addressing the affective and behavioral problems of young children with or at risk of disabilities. Research may include family support practices that foster social-emotional development and resilience. Applications under this focus area must target the mental health of infants and toddlers (0–2 years old), or preschoolers (3–5 years old) or both (0–5 years old) who are receiving services under either the Part C or Part B programs of IDEA.

All applications submitted under this focus area must describe steps they will take to assure that findings from their research are disseminated to research and training centers (RTC's) funded by the Office of Special Education and Rehabilitative Services, including the two children's mental health RTC's funded by the National Institute on Disability and Rehabilitation Research (NIDRR) and the RTC on the Development of Infants, Toddlers, and Preschoolers with or at Risk of Disabilities.

We intend to make approximately 3 awards in Focus 7. At least one award will be made to a project that addresses the social and emotional development of young children with cognitive disabilities.

Competitive Preference

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period for all Focus Areas: Up to 36 months for all focus areas.

Maximum Award for all Focus Areas: The maximum award amount is $180,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. This maximum award applies to any application for any Focus area. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits for all Focus Areas: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—Research and Training Center on the Development of Infants, Toddlers, and Preschool Children With or at Risk of Disabilities (84.324K)

If developmental delays are not addressed by appropriately trained personnel during the early years, a range of learning and behavioral problems may be more likely to occur later in school. Alternatively, early identification and effective interventions—in social, emotional, behavioral, communication, and preliteracy domains—can prevent or reduce the impact of specific disabilities. This priority would establish a research and training center (RTC) to translate the knowledge base on young children's early relationships, emotional, self regulatory, and social development, and environmental factors into effective strategies that establish a foundation for school success. The RTC will demonstrate and evaluate these strategies and implement effective training and dissemination efforts targeted on improving early childhood services and strengthening the capacity of families to support the healthy development of their children.

The RTC will serve as a center of national excellence for service providers, young children with or at risk of disabilities, family members, and other caregivers. The RTC supported under this priority must:

(1) Conduct coordinated and advanced programs of applied research to produce and disseminate knowledge to improve interventions and service delivery systems associated with the healthy mental development of infants, toddlers, and preschool children with or at risk of developmental disabilities, including research on the use of and state of practice in inclusive settings. These children should include those who are from communities representing rural, low income, urban, limited English proficiency, immigrant, and migrant populations.

(2) Provide training, including graduate, preservice, and inservice training, to help improve the skills of personnel serving young children with or at risk of disabilities and their families and caregivers.

(3) Disseminate information through conferences, workshops, public education programs, inservice training programs, and other activities;

(4) Collaborate with other RTC's supported by the Department, including the RTC's on children's mental health supported by the National Institute on Disability and Rehabilitation Research (NIDRR); and

(5) Utilize modern communication technologies, including the Internet, to expand the impact of its dissemination approaches.

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, D.C. Projects must budget for the travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Competitive Preference: Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The maximum award amount is $500,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 3—Research Institute on Early Literacy for Infants, Toddlers, and Young Children With Visual Impairments (84.324Q)

Current research documents the link between the development of preliteracy and early literacy skills for infants, toddlers, and young children and subsequent reading and academic success. The development of preliteracy and early literacy skills for infants, toddlers, and young children with visual impairments including blindness poses additional challenges for families and professionals. Many of the current practices and intervention strategies which promote the development of preliteracy and early literacy skills, including braille literacy, have not been empirically validated with this population, but were developed for use with infants, toddlers, and young children without visual impairments.

Priority: This priority supports a research institute to identify, validate, and disseminate the best and most promising practices for developing preliteracy and early literacy skills for infants, toddlers, and young children, birth through to entry into first grade, who have visual impairments, including blindness.

A project funded under this priority must—

(a) Review and synthesize the research base and examine the current and most promising practice paradigms in the following areas:

(1) Assessment of the needs of infants, toddlers, and young children with visual impairments, including blindness, as those needs relate to the development of preliteracy and early literacy skills;

(2) Determination of how new or innovative intervention strategies to promote preliteracy and early literacy skills used for other infants, toddlers, and young children, could be applied for use with infants, toddlers, and young children who have visual impairments, including blindness;

(3) Integration of intervention strategies in communication and other developmental domains with preliteracy and early literacy intervention methods for infants, toddlers, and preschoolers with visual impairments, including blindness;

(4) Access to and use of new and developing technologies for use with infants, toddlers, and young children with visual impairments, including blindness, for the development of preliteracy and early literacy skills.

(b) In consultation with the Office of Special Education Programs (OSEP), design and conduct a strategic program of research that addresses knowledge gaps by:

(1) Designing a rigorous research program whose conceptual framework builds upon recent and current research, identifies the gaps in knowledge, and provides a basis for the strategies and procedures to be studied;

(2) Collecting, analyzing, and reporting a variety of data, such as (i) information on the service settings, the service providers, and the infants, toddlers, and young children with visual impairments, including blindness and their families; (ii) outcome measures for the infants, toddlers, and young children and their families who are the focus of the intervention strategies and procedures; and (iii) implementation data from the service providers, administrators, agencies, families, and others involved in the research;

(3) Conducting the research using a variety of methodologies designed to comprehensively examine the impact of the interventions on preliteracy and early literacy skill development in the target population;

(4) Conducting the program of research in settings that ensure that the research findings and products impact preliteracy and early literacy development for all infants, toddlers, and young children with visual impairments, including children with blindness, and those children with visual impairments and secondary disabilities, and including those who are from communities representing rural, low income, urban, limited English proficiency, immigrant, and migrant populations; and

(5) Collaborating with other research institutes, centers, and studies and evaluations supported by the Department.

(c) Design, implement, and evaluate a dissemination approach that links research to practice and promotes the use of current knowledge and ongoing research findings. This approach must:

(1) Develop linkages with OSEP technical assistance providers to communicate research findings and distribute products; and

(2) Prepare the research findings and products from the project in formats that are useful for specific audiences, including early intervention researchers; general and special education researchers; local, State, and national policymakers; education practitioners and early interventionists; and families of infants, toddlers, and young children with visual impairments, including blindness.

(d) Provide training and research opportunities for a limited number of

graduate students whose graduate studies are in the area of education for infants, toddlers, and young children with visual impairments, including blindness.

(e) Meet with the OSEP project officer in the first three months of the project to review the program of research, implementation, and dissemination approaches.

(f) In addition to the annual two-day Project Directors' meeting in Washington, D.C. listed in the ''General Requirements'' section of this notice, budget for another annual two-day trip to Washington, D.C. to collaborate with the OSEP project officer by sharing information and discussing design, implementation, and dissemination issues.

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, D.C. Projects must budget for the travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Competitive Preference

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, within this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The maximum award amount is $500,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 4—Model Demonstration Projects for Children With Disabilities (84.324T)

This priority supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches for providing early intervention, special education and related services to infants, toddlers, and children with disabilities, ages birth through 21. Projects supported under this priority are expected to be major contributors of models or components of models for service providers and for outreach projects funded under IDEA.

Requirements for All Demonstration Projects

A model demonstration project must—

(a) Use rigorous quantitative or qualitative evaluation methods and data;

(b) Evaluate the model by using multiple measures of results to determine the effectiveness of the model and its components or strategies;

(c) Produce detailed procedures and materials that would enable others to replicate the model; and

(d) Communicate with appropriate audiences through means such as special education technical assistance providers and disseminators, refereed journal publications and other publications, conference presentations, or a web site.

If the project maintains a web site, it must include relevant information and documents in an accessible form.

Federal financial participation for a project funded under this priority will not exceed 90 percent of the total annual costs of the project (see section 661(f)(2)(A) of IDEA).

In addition to the annual two-day Project Directors' meeting in Washington, D.C. mentioned in the General Requirements section of this notice, projects must budget for another annual meeting in Washington, D.C. to collaborate with the Federal project officer and the other projects funded under this priority, to share information and discuss model development, evaluation, and project implementation issues.

Under this absolute priority, we will fund projects only in the focus areas listed below.

Focus 1—Model Demonstration Projects To Support Whole-School Reforms of Services for Children With Disabilities

The reauthorization of IDEA in 1997 (Public Law 105–17) encouraged ''incentives for whole-school approaches and pre-referral intervention to reduce the need to label children as disabled in order to address their learning needs'' (section 601(c)(5)(F)) and authorized: (a) IDEA support for schoolwide programs under Title I of the Elementary and Secondary Education Act of 1965 (section 613(a)(2)(D)); (b) Services and aids that also benefit nondisabled children (section 613(a)(4)(A)); (c) Integrated and coordinated service systems (section 613(a)(4)(B) and 613(f)); and (d) School-based improvement plans (section 613(g)).

This focus supports model projects that demonstrate how promising and proven research-based practices and strategies can be used to develop whole-school approaches that benefit all students, including all students with disabilities, and fully implement all other requirements of the law. Applicants must demonstrate how they will improve results for both students with disabilities and other students.

Specifically, applicants must describe activities to ensure that all students with disabilities have access to and succeed in the general curriculum; can participate in extracurricular activities, if available at the school; receive positive behavioral interventions, supports, and services when appropriate; and are included in State and local assessments.

Flexibility and innovation are encouraged in the design of the models, but every model must involve regular and special education staff in early identification, intervention, and prevention services; provide for parent participation; and make available a continuum of services, aids, and supports to meet the needs of students with disabilities in the least restrictive environment. It is expected that models funded under this priority will build upon other models, strategies, and practices including those supported under IDEA national activities.

Eligible applicants are invited to apply for these grants to foster whole-school projects at (a) Primary and

elementary school, (b) middle and junior high school, or (c) high school levels. Regardless of who the project applicant is, a partnership between the LEA and an IHE or a private nonprofit organization must be demonstrated and maintained throughout the duration of the project. Applicants are required to collaborate with existing OSEP technical assistance centers and evaluation efforts throughout the course of the project.

Applicants must specify at least one school building, at each grade range addressed in the project, that will participate in the model demonstration project throughout the duration of the grant. Further, the LEA or consortium of an LEA and an IHE or a private nonprofit organization must agree to share evaluation data (with protections for anonymity of subjects) on student achievement and project effectiveness with OSEP-sponsored activities, which will synthesize research and evaluation information across the grantees. In addition projects must ensure and demonstrate how they will monitor and document challenges and progress throughout the project.

Projects funded under this priority must schedule one trip, annually to Washington, D.C. (as specified in the ''General Requirements'' section of this notice), one trip, annually to Washington, D.C. (as specified in the ''Requirements for All Demonstration Projects'' section of this notice), and an additional meeting to take place by the end of the first month of the project.

We intend to make approximately 15 awards under this priority. Each of the three grade ranges will be represented in the awards with at least three awards at each level.

Maximum Award: Projects will be funded for up to 48 months. The maximum award amount is $150,000 (exclusive of any matching funds) during each of the first two 12-month funding periods, and $75,000 (exclusive of any matching funds) during each of the two remaining 12-month funding periods. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this focus area is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Focus 2—Strengthening Childcare Infrastructures for Infants, Toddlers, and Preschoolers With Disabilities From Underserved Families and Communities

This focus supports model projects that demonstrate new or innovative childcare models that address the developmental needs of infants, toddlers, and preschoolers with disabilities. In addition to identifying and supporting underserved children with disabilities and their families, projects must address the special and individualized intervention needs of young children without resulting in the removal of children from inclusive settings and typical experiences. To maximize sustainability of change, projects must incorporate multiple formal and informal service delivery systems that have evolved in a community over the years, when identifying and addressing challenges that contribute to uneven service provision.

Challenges addressed under this focus area may include, but are not limited to, one or more of the following:

(a) The lack of available mental health services for children under age 6;

(b) Adverse environmental home or community conditions;

(c) Cultural differences between service providers and families;

(d) Differences between what child care programs offer and what families of young children with disabilities or at-risk for disabilities need or want;

(e) Children living with mentally ill family members;

(f) Children with complex medical concerns; and

(g) Children in families dealing with the stresses of poverty, substance abuse, or violence.

Measurements of model effectiveness should assess multiple influences longitudinally when reporting impact of community, family, and individual intervention variables on child development. Child competence measures should include observational measures of a child's underlying processing and executive functioning over time vis-a-vis the interventions received. In addition to measuring multi-level impact, models should examine whether the interventions can be implemented as planned, whether the participants for whom the program is designed actually participated, and how much the program costs.

Projects funded under this focus must schedule one trip, annually to Washington, D.C. (as specified in the ''General Requirements'' section of this notice), one trip, annually to Washington, D.C. (as specified in the ''Requirements for All Demonstration Projects'' section of this notice), and an additional meeting to take place at the beginning of year one, to identify collaborations across sites that can result in increased sample sizes, and planned variations of critical variables, interventions, and outcomes.

We intend to make approximately 3 awards under this focus area.

Maximum Award: The maximum award amount is $180,000 (exclusive of any matching funds) per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this focus is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Focus 3—Agency Participation in Transition

This focus area supports model projects that demonstrate new or improved approaches to participation and successful interagency collaboration in transition planning.

Projects must:

(a) Involve collaboration between multiple systems, such as education, vocational rehabilitation, workforce development, employer organizations, community networks, health, youth and adult service agencies, and other relevant agencies.

(b) Improve transitions between systems and eliminate service disruptions, including waiting lists for students exiting school; and

(c) Demonstrate that student Individualized Education Programs (IEP's) are based on students' interests, preferences, and needs and include, as appropriate, a statement of interagency responsibilities and any needed linkages. The linkages must include, as appropriate, postschool environments such as postsecondary schools, employment, adult service programs, and local One-Stop Career Centers created under the Workforce Investment Act.

Projects funded under this focus must schedule one trip, annually to Washington, D.C. (as specified in the ''General Requirements'' section of this notice), one trip, annually to Washington, D.C. (as specified in the ''Requirements for All Demonstration Projects'' section of this notice), and an

additional meeting to take place by the end of the first month of the project.

We intend to make approximately 3 awards under this focus area.

Maximum Award: The maximum award amount is $180,000 (exclusive of any matching funds) per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this focus is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Competitive Preference for All Focus Areas

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period for All Focus Areas: Up to 48 months.

Absolute Priority 5—Improving Postschool Outcomes: Identifying and Promoting What Works (84.324W)

With the passage of the Education of the Handicapped Act Amendments of 1983, a Federal initiative was begun to assist high school youth with disabilities in achieving their goals for adult life, including postsecondary education, continuing education, competitive employment, and independent living. This process, known as secondary transition, has continued to be defined and developed in legislation, research, and practice. To a large extent, it has been the impetus for the shift in special education from an emphasis on process to one of achieving better results for children with disabilities. The Office of Special Education Programs (OSEP) has funded approximately 500 secondary transition projects since 1984 to develop, refine and validate effective practices and programs.

Priority: The purpose of this priority is to improve results for secondary-aged youth with disabilities by at a minimum, synthesizing, analyzing, and disseminating information in each of three areas:

—Improving academic results;
—Secondary transition practice; and
—Dropout prevention and intervention, including factors associated with early school exit for students with disabilities.

The project must—

(a) Synthesize the professional literature on each area. In conducting its syntheses, the project must:

(1) Develop a conceptual framework around which research questions will be posed and the synthesis conducted. Develop these research questions with input from potential consumers of the synthesis to enhance the usability and validity of the findings. Consumers include technical assistance providers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(2) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (including but not limited to, integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977);

(3) Implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity of each synthesis, including the generalization of findings;

(4) Establish criteria and procedures for judging the appropriateness of each synthesis;

(5) Meet with OSEP to review the project's methodological approach for conducting the synthesis prior to initiating the synthesis;

(6) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflicts among findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving policy, academic supports, transition practices, and dropout prevention and intervention;

(7) Submit a draft report of the synthesis in each of the three focus areas, and based on review by OSEP staff, potential consumers, revise and submit a final report to OSEP and the Secondary Education and Transition Technical Assistance Center (SETAC) for dissemination to the field.

(b) Conduct an analysis of each of the three areas to identify effective approaches and practices derived from model demonstration projects (including, but not limited to, projects funded by OSEP, the Rehabilitation Services Administration (RSA), the National Institute on Disability and Rehabilitation Research (NIDRR), the Office of Postsecondary Education (OPE), the Office of Education Research and Improvement (OERI), and the Office of Vocational and Adult Education (OVAE).

In conducting its analyses, the project must:

(1) Identify the relevant projects for each analysis. Describe and implement procedures for locating and organizing relevant information on the individual projects, including sampling techniques, if appropriate;

(2) Articulate a research-based conceptual framework to guide the selection of variables to be examined within and across projects, including demographics, target population, purpose, activities, outcomes, and barriers. Pose research questions around which the analysis will be conducted. Develop these questions with input from potential consumers of the information to enhance the usability and validity of the research findings. Consumers include technical assistance providers, policymakers, researchers, educators, other relevant practitioners, individuals with disabilities, and parents;

(3) Meet with OSEP and the OSERS transition work group to review the project's research questions and methodological approach for conducting the analysis prior to initiation;

(4) Analyze and interpret the findings of the analysis, including similarities and differences among project goals, activities, staffing and costs; points of consensus and conflict among the findings or outcomes of the demonstrations; and the characteristics of model programs that hold significant promise for the field based on outcome data. In addition, the analysis must link to the synthesis on this topic and provide for the future policy formulation, practice implementation, and research priorities; and

(5) Submit a draft report of the analysis in each of the focus areas, and based on reviews by OSEP staff and potential consumers, revise, and submit a final report to OSEP and SETAC for dissemination and publication to inform policy and practice.

(c) Disseminate results of the project by collaborating with SETAC.

In addition to the annual two-day Project Directors' meeting in Washington, D.C. listed in the ''General Requirements'' section of this notice, projects must budget for another meeting each year in Washington, D.C. with OSEP to share information and discuss project implementation issues.

Competitive Preferences

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The maximum award amount is $600,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limit: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities [CFDA 84.326]

Purpose of Program: The purpose of this program is to provide technical assistance and information, through such mechanisms as institutes, Regional Resource Centers, clearinghouses, and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants: State and local educational agencies, institutions of higher education, other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

Priority: Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following priorities:

Absolute Priority 1—National Clearinghouse on Postsecondary Education (84.326H)

Priority: This priority will support a National Clearinghouse on Postsecondary Education for Individuals with Disabilities. The Clearinghouse must—

(a) Collect and disseminate information on the following:

(1) Legislation affecting individuals with disabilities entering and participating in education and training programs after high school;

(2) Policies, procedures, support services (including assistive technology and adaptations), and other resources available or recommended to facilitate the postsecondary education of individuals with disabilities;

(3) Available resources and support services in postsecondary settings that include, or can be adapted to include individuals with disabilities; and

(4) Sources of financial aid for the postsecondary education and training of individuals with disabilities.

(b) Develop and disseminate a set of materials designed specifically to help prepare students with disabilities for transition to postsecondary education. Audiences for these materials should include vocational rehabilitation counselors, secondary guidance counselors, transition specialists, general and special education teachers, secondary career center and school-to-work staff, staff from Federally funded transition and postsecondary projects, such as, GEAR-UP, 21st Century Schools and TRIO, and students with disabilities and their families.

(c) Identify areas, in addition to those specified in paragraphs (a) and (b), in which information is needed and provide information in those areas;

(d) Develop a coordinated network of professionals, appropriate organizations, secondary and postsecondary education associations, institutions of higher education, mass media, other clearinghouses, and governmental agencies at the Federal, State, and local levels for purposes of disseminating information, promoting awareness of issues related to the postsecondary education of individuals with disabilities, and referring individuals who request information to appropriate resources;

(e) Respond to requests for information from individuals with disabilities, their parents, and professionals in secondary and postsecondary settings, education, vocational rehabilitation, and others who work with such individuals, so that persons may make informed decisions about postsecondary education and training. All information requests should be solicited and responses disseminated through multiple vehicles, accessible to individuals with disabilities. Such vehicles must include a toll free telephone number, a World Wide Web site, and electronic and regular mail. Technologies, such as CD–ROM and listservs should also be considered for information dissemination. Word Wide Web-based delivery of information must be maintained and updated on a regular basis.

(f) Link with other Federally supported technical assistance projects concerned with the transition of students with disabilities from secondary to postsecondary settings, in collecting, developing, and disseminating information. These should include projects funded by the U.S. Department of Education, Office of Special Education and Rehabilitative

Services such as the Parent Training and Information Centers (PTIs); the Centers for Independent Living (CILs); the Regional Resource Centers (RRCs); the National Center on Educational Outcomes; the IDEA Partnership Projects; the National Center for Secondary Education and Transition Technical Assistance Center (NCSET); the National Center on the Study of Postsecondary Education Supports (NCSPES); all of the Demonstration Projects to Ensure Students With Disabilities Receive a Quality Higher Education, funded through the U.S. Department of Education's Office of Postsecondary Education; Historically Black Colleges and Universities (HBCUs); and other minority institutions.

(g) Make information products available in accessible formats, and as appropriate, foreign languages.

(h) Work with the American Council on Education (ACE) to ensure the successful transition of materials and resources from the HEATH Resource Center to the newly funded postsecondary clearinghouse.

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, D.C. Projects must budget for the travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Competitive Preference

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The maximum award amount is $500,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—National Technical Assistance Project for Infants, Toddlers, and Children Who Are Deaf-Blind (84.326T)

Background

IDEA includes provisions designed to help ensure that each child with a disability is provided a high-quality individual program of services to meet their developmental and educational needs. For children who are deaf and blind to receive such services, intensive technical assistance must be afforded State and local educational agencies to appropriately address the special needs of these children. In addition, given the low-incidence nature of this population, many early intervention programs or educational agencies lack personnel with the training or experience to serve children who are deaf-blind. For these reasons, the following priority supports a project of national scope that provides specialized technical assistance regarding the provision of early intervention, special education, related services, and transitional services to children who are deaf-blind and their families.

Priority: This priority supports one national project that provides technical assistance, training, and information to State deaf-blind projects, families, model demonstration projects, and other agencies and organizations that are responsible for the provision of early intervention, special education, related services, and transitional services for infants, toddlers, and children who are deaf-blind.

The project must:

(a) Identify specific project goals, objectives, and activities in providing an array of services to State projects, families, model demonstration projects, other agencies and organizations that are responsible for providing services to children who are deaf-blind.

(b) Assist State projects and agencies to facilitate local, regional, or State systemic change initiatives that include children who are deaf-blind.

(c) Assist State projects and agencies to increase the States' capacities to improve early intervention, special education, related services, and transitional services to improve outcomes for children who are deaf-blind and their families.

(d) Provide technical assistance, training, and information that focus on the implementation of research-based, effective practices that will result in improved capacity of States and LEAs in providing appropriate assessment, planning, placement, and services.

(e) Provide technical assistance, training, and information that focus on the implementation of IDEA specific to children who are deaf-blind and their families.

(f) Implement and maintain an assessment of the needs of individual States and the overall needs of States to determine the array, type, and intensity of technical assistance to be provided.

(g) Facilitate activities and enhance relationships that build the capacity of deaf-blind children and their families for advocacy, empowerment, and increased knowledge.

(h) Evaluate project goals, objectives, and activities to determine the effectiveness of project strategies and the overall impact of technical assistance.

(i) Collaborate with other Federal technical assistance projects and State agencies that provide early intervention, special education, related services, and transitional services through programs such as Developmental Disabilities, Vocational Rehabilitation, Centers for Independent Living, and Parent Training and Information Centers in the provision of technical assistance, training, and information sharing.

(j) Develop and disseminate materials and products to supplement technical assistance and training. These materials and products must be made available through an accessible Internet web site.

(k) Assist personnel training programs to work collaboratively to impact a greater number of teachers and paraprofessionals so that they can more effectively provide services to children who are deaf-blind.

(l) Gather, maintain, and analyze demographic information on children who are deaf-blind for the purpose of developing project priorities based on

data documenting the needs of these children.

(m) Assist OSEP in conducting the annual Project Directors' Meeting and other Federal initiatives.

(n) Develop and implement strategies to promote coordination among State and local agencies and organizations and children who are deaf-blind and their families specific to, but not limited to, the following:

(1) Early identification, assessment, placement and service provision;

(2) Alternate assessment as well as appropriate modifications and accommodations;

(3) Participation in the general curriculum and inclusion in natural environments;

(4) Access to appropriate and necessary assistive technology, including augmentative and alternative communication systems;

(5) Family-educator partnerships;

(6) Transition services including appropriate and timely assessment, planning, vocational training, interagency collaboration, and job placement and support;

(7) Consumer self-determination and self-advocacy; and

(8) Designing appropriate evaluation strategies for children who are deaf-blind.

(o) Establish and maintain an advisory committee to assist in promoting project activities. The committee must include at least one individual with deaf-blindness, one parent of a child with deaf-blindness, one representative of a State educational agency, and at least three professionals with training and experience in serving children with deaf-blindness, and other individuals representing appropriate agencies.

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition —

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, DC Projects must budget for the travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project promotes best practices designed to demonstrate the potential for advancing significant new knowledge in the area of services to children who are deaf-blind.

Competitive Preference:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The maximum award amount is $1,700,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Technology and Media Services for Individuals With Disabilities (CFDA 84.327)

Purpose of Program: The purpose of this program is to promote the development, demonstration, and utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants: State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Priority: Under section 687 of IDEA and 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

Absolute Priority 1—Video Description (84.327C)

Background

This priority supports cooperative agreements to provide video description for national broadcast, satellite, and cable television programs. The purpose of this activity will be to describe television programs and videos in order to make television programming and videos accessible to children and adults who are blind or have low vision. The intent of this priority is to allow children who are blind or have low vision to engage in age appropriate activities that include the watching of television. Only educational, news, and informational television and videos may be described after September 30, 2001.

Priority: To be considered for funding under this priority, a project must —

(a) Include criteria that take into account the preference of consumers for particular topics of interest, the diversity of programs or videos available, and the contribution of these programs or videos to the general educational, social, and cultural experiences of individuals with visual disabilities;

(b) Identify and support a diverse consumer advisory group including parents and educators, that would meet at least annually;

(c) Identify the total number of hours and cost for each program to be described;

(d) Identify for each program or video to be described, the source and amount of any private or other public support, if any;

(e) Demonstrate the willingness of program providers to permit video description and distribution of their program or video; and

(f) Evaluate the effectiveness of the methods and technologies used in providing this service and the impact on intended populations.

Video descriptions produced under these awards must be provided on request to owners or rights holders of programming, and may be reformatted or otherwise adapted by them for future airings or other distributions.

Competitive Preference:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The maximum award amount is $350,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 2—Accessible Educational TV (84.327E)

Background

This priority supports cooperative agreements to provide for the description and captioning of widely available, noncommercial, educational, and instructional programming that is suitable for use in the classroom and shown on broadcast, satellite, or basic cable television networks. Captioning provides a visual representation of the audio portion of the programming while video description provides a narrative of what takes place visually on the screen. This will allow children with disabilities in the areas of vision or hearing to engage in age appropriate activities that includes the watching of television. Only educational, news, and informational television and videos may be captioned or described after September 30, 2001.

Priority: To be considered for funding under this competition, a project must —

(a) Include criteria that takes into account the preference of educators, students, and parents for particular educational and instructional programs, the diversity of this type of programming available, and the contribution of this type of programming to the general educational experience of students who have disabilities in the areas of vision or hearing;

(b) Identify and support a diverse consumer advisory group, including parents and educators, that would meet at least annually;

(c) Identify the extent to which the programming is widely available;

(d) Identify the extent to which this commercial-free programming may be taped for later classroom use;

(e) Identify the total number of program hours to be made accessible and the cost per hour for captioning and description;

(f) Identify for each program to be made accessible, the source of any private or other public support, and the projected dollar amount of that support, if any;

(g) Demonstrate the willingness of program providers or owners of programs to permit and facilitate the quality captioning and description of their programs;

(h) Provide assurances from program providers or owners of programs stating the extent to which programs made accessible under this project will air, and will continue to air, without the need for reformatting or additional description;

(i) Evaluate the effectiveness of the methods and technologies used in providing this service and the impact on intended populations; and

(j) Conduct nationwide outreach activities that target the potential audience for this type of programming. To accomplish this objective, the applicant must employ multiple dissemination mechanisms and approaches, such as a user-friendly web site that incorporates hotlinks to other web sites such as the National Clearinghouse in order to further promote and inform the target audiences about the service. This web site must be fully accessible and customized to attract individuals from culturally and economically diverse backgrounds and individuals with disabilities, across varying age levels and professional experiences.

Captions and video descriptions produced under these awards must be provided on request to owners or rights holders of programming, and may be reformatted or otherwise adapted by them for future airings or other distributions.

Competitive Preferences

Within this absolute priority, we will award the following competitive preference, under 34 CFR 75.105(c)(2)(i): An additional 10 points to an applicant that proposes to include in the range of programs to be described and captioned at least 52 hours a year of programming originally broadcast in Spanish.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 120 points.

Project Period: Up to 36 months.

Maximum Award: The maximum award amount is $225,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 3—Open-Captioned Educational Media: Video Selection, Captioning, and Distribution (84.327N)

Background

This priority supports one cooperative agreement for the selection, acquisition, open-captioning, and distribution of media on a nonprofit free loan-basis, for use by students who are deaf or hard of hearing, parents of deaf or hard of

hearing persons, individuals directly involved in activities promoting the advancement of individuals who are deaf or hard of hearing, and other individuals with disabilities in the United States. This priority would ensure that students and other individuals who are deaf or hard of hearing, as well as other individuals with disabilities, might benefit from the same media used to enrich the educational experiences of students and other individuals who do not have disabilities.

Priority: To be considered for funding under this priority, the project must:

(a) Develop strategies and procedures to be used in determining curricular needs of students who are deaf or hard of hearing in all types of school settings for captioned media;

(b) Obtain media from producers and distributors for screening, evaluation, and captioning. Select from titles submitted by evaluators those that closely match the curricular needs identified under paragraph (a) of this priority, taking into account the media most commonly used in school districts across the nation for students.

(c) Make arrangements with respective producers and distributors to purchase, caption, and distribute selected media, including distribution in alternate formats. Captioned masters must be made available to producers and distributors in an effort to promote the use of captioned media.

(d) For selected media purchased, have captions prepared by captioning agencies that meet guidelines for captioned media take into account the age and reading levels of the likely target audience.

(e) Establish guidelines to ensure even and maximum participation of captioning service providers in providing captions.

(f) Develop and implement quality control guidelines and procedures for checking media after it has been captioned, and procedures for training captioning agencies that express the desire to caption for the program.

(g) Prepare up to 300 copies of each title purchased for distribution through the distribution system. Twenty five percent of the annual acquisition also must be captioned in Spanish so those Latino students who are deaf or hard of hearing can have access to media.

(h) For selected videos to be used in classrooms, select and train writers to prepare lesson guides.

(i) Develop strategies and procedures to be implemented in operating a distribution system, consisting of local and regional depositories for distribution of captioned educational media, and one central general interest and one central educational distribution center. Local and regional depositories may include State schools, public or private school systems, public libraries, colleges or universities, or other distribution points. The system must be computerized and allow electronic ordering, booking, and shipping of materials, including interdepository circulation of free loan captioned media. Explore and utilize alternate delivery methods (i.e., via CD Rom, Internet, or Satellite) of captioned media.

(j) Describe and establish computerized registration procedures, accessible via the Internet, that will be used to register eligible users, schedule captioned media retrieval, and track and record consumer feedback and usage information.

(k) Prepare, update, and distribute copies of a catalog listing all captioned media available under this project, including copies of lesson guides, as they become available. Both lesson guides and catalogs must be made available online.

(l) In years 2 and 4 of the award, convene a meeting of local and regional depository managers, librarians, and audiovisual and other personnel from State educational agencies for the purpose of training and planning. The year two meeting will be held at the project site and the year four meeting will be held in the Washington, D.C. Metropolitan area. Regional meetings of depository managers shall be held in years 1 and 3 of the project and shall coincide with meetings scheduled under paragraph (m). All dates should be coordinated with the Project Officer.

(m) Establish an advisory group of 7 members, which shall meet annually, consisting of video producers and distributors, captioning service providers, consumers of captioned media, parents of students with hearing impairments, public and private school administrators and educational personnel, and members from minority communities. This advisory group shall develop an evaluation program for incorporating the reactions and suggestions of users into the selection and captioning process, provide input regarding the impact on program activities and services, review effectiveness of the system and make recommendations to ensure maximum effectiveness. The Project Officer must approve committee membership. Format, agenda and dates of advisory group meetings shall require prior approval by the Project Officer. A set of recommendations for program enhancements recommended by the advisory group shall be forwarded to the Department annually.

(n) Develop and maintain a comprehensive database containing information related to the availability of open and closed captioned media, information regarding the captioned media loan service, and captioning service providers and procedures for applying for free loan services. In addition, the project shall maintain a clearinghouse of information on the subject of captioning for use by consumers, agencies, corporations, businesses, and schools. All information should be accessible via the Internet.

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, D.C. Projects must budget for the travel associated with this review; and

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

Competitive Preference

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The maximum award amount is $3,350,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 80 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 4—Closed Captioned Daytime Television Programs (84.327S)

This priority supports cooperative agreements to continue and expand the variety of daytime television programming available nationally to individuals who are deaf or hard of hearing through captioning. Captioning provides a visual representation of the audio portion of television programming and enables children, young adults, and adults who are deaf or hard of hearing to engage in age-appropriate behavior with their nondisabled peers by participating in shared educational, social, and cultural experiences which include the watching of television. Federal funds may not be used to fund more than 65 percent of captioning costs in Year One of the project, no more than 60 percent of the captioning costs in year two, and no more than 55 percent in year three. For the purpose of this activity, program hours, or the costs of captioning associated with those programs, that are funded by promotional billboards shall not be considered as an in-kind cost, or a private sector match, for those Federal funds. Only educational, news, and informational television and videos may be captioned after September 30, 2001.

Priority: To be considered for funding under this priority, a project must—

(a) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers from diverse communities for particular daytime programs;

(b) Provide a backup system that will ensure quality captioning service;

(c) Identify and support a consumer advisory group, which would meet at least annually;

(d) Identify the total number of hours and the captioning cost per program hour for each of the programs captioned;

(e) Identify for each program to be captioned, the source, and amount of any private or other public support;

(f) Demonstrate the willingness of major national commercial broadcast or basic cable networks to permit and facilitate the quality captioning of their programs; and

(g) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Captions produced under these awards must be provided on request to owners or rights holders of programming, including networks or syndicators and may be reformatted or otherwise adapted by them for future airings or other distributions.

Competitive Preferences

Within this absolute priority, we will award the following competitive preference, under 34 CFR 75.105(c)(2)(i): An additional 10 points to an applicant that proposes to include in the range of programs to be described and captioned at least 52 hours a year of programming originally broadcast in Spanish.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 120 points.

Project Period: Up to 36 months.

Maximum Award: The maximum award amount is $200,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

Absolute Priority 5—Research Institute on the Use of Technology In Early Intervention (84.327X)

Background

Technology has shown great potential in supporting the growth and development of children. This is particularly true with infants and toddlers with disabilities. The years from birth to three represent a pivotal stage in a child's life. During this period, young children make important gains in mobility, communication, social awareness, and cognitive understanding. It is also a period of time in which children's development is intrinsically tied to interaction with those who care for them. Technology has the potential to empower families and caregivers to provide the type of environment in which infants and toddlers with disabilities can reach their maximum potential for growth and learning.

The IDEA lists assistive technology devices and services as early intervention services that could be provided to meet the developmental needs of each child and the needs of their families relating to enhancing the child's development. These services are selected in collaboration with the parents and provided in conformity with an individualized family service plan (IFSP) (34 CFR 303.12(a)).

Section 602(1) of IDEA defines an assistive technology (AT) device as ''any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.'' According to Section 602(2), an assistive technology service means, ''any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device * * *'' The law lists such services as evaluation, purchasing, selection, coordination with other interventions, and training for the child and family, as well as training or technical assistance for professionals.

Even though technology appears to hold great benefits for infants and toddlers with disabilities, the knowledge base on this topic is limited. Evidence of the use and effectiveness of assistive technology for this population is for the most part anecdotal and practitioner-oriented. Comprehensive research on the subject is scarce.

There is little argument that technology devices can help infants and toddlers with disabilities interact with their environment. Some useful AT devices could be off-the-shelf commercial items or materials that have been modified or adapted according to the specific needs of the child. Examples include head pointers, picture boards with symbols or pictures, and pull toys. More complex technologies may involve computers or electronics that often are specially ordered and fitted. Examples are electronic scooters,

drawing software, or a musical mat. Whatever device or application is chosen, it is important, that when considering the use of technology with young children, the professional involved goes beyond merely matching tools to the child's abilities and disabilities. The decision also should reflect the family's goals and be another tool in helping young children to grow and develop within the context of the family.

Priority: This priority is for a research institute to study the use of technology to enhance the development of infants and toddlers with disabilities ages birth to three years.

The Institute must:

(a) Select a range of settings within States reflecting diverse demographics;

(b) Use methodologies such as interviews, case studies, focus groups, reviews of records, observations, and policy analyses;

(c) Consider what factors enhance or impede decisionmaking, planning, acquisition, maintenance, and training in the use of technology;

(d) Answer, at a minimum, the following research questions:

(1) Prevalence: What percentage of infants and toddlers with disabilities use technology as part of their IFSP? What functions are these devices and services intended to perform for the individual child?

(2) Policy and Resources: What policies or guidelines and processes are in place to help the IFSP team make decisions about the use of technology? What resources are in place to finance the provision of technology? What mechanisms are in place to ensure leveraging of resources among appropriate agencies? How do early intervention programs acquire technology? How is the technology managed and maintained?

(3) Individualized decisionmaking: How are the child's needs for the technology evaluated? How does the IFSP team determine when a technology device or service is appropriate? How is the appropriate technology selected, designed, or adapted to the individual child?

(4) Training and Support: What training and technical assistance is available for service providers, caregivers, families, and other appropriate individuals regarding technology? Are structures in place to promote collaboration among appropriate agencies and service providers?

(e) Design and implement a dissemination approach that promotes the use of current knowledge and ongoing research findings. In support of this approach, the Institute must:

(1) Develop links with appropriate Department of Education technical assistance providers to communicate research findings and distribute products;

(2) Develop a web site to link participating early intervention programs and to provide up-to-date information on findings;

(3) Prepare the research findings in formats that are useful for specific audiences, such as families, service providers, administrators, and policy makers;

(4) Meet with the OSEP project officer and appropriate OSEP staff within the first three months of the project to review the strategic work plan and the approach to dissemination;

(f) Fund at least three graduate students per year as research assistants who have concentrations in early childhood development, early intervention issues, and technology; and

(g) Budget for trips to Washington, DC (one trip during the first year of the project to meet and collaborate with U.S. Department of Education officials; one trip annually, as specified in the ''General Requirements'' section of this notice, to attend the two-day OSEP Research Project Directors' Conference; and one trip annually to attend the three-day Early Childhood Combined Conference).

In deciding whether to continue this project for the fourth and fifth years, we will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary, which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Competitive Preference

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the ''General Requirements'' section of this notice. In determining the effectiveness of those strategies, we may consider the applicant's past success in pursuit of this goal.

Therefore, for purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The maximum award amount is $500,000 per year. Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Requests for funding reasonable accommodations are not included in this limitation.

Page Limits: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

For Further Information Contact: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 260–9182.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for those programs.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2001

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Maximum award (per year) *	Project period	Page limit **	Estimated number of awards
84.324D Directed Research Projects.	01/19/01	03/02/01	.....	$180,000	Up to 36 mos	50	27
84.324K Research and Training Center on the Development of Infants, Toddlers, and Preschool Children with or At Risk of Disabilities.	01/19/01	03/09/01	.....	500,000	Up to 60 mos	70	1
84.324Q Research Institute on Early Literacy for Infants, Toddlers, and Young Children with Visual Impairments.	01/19/01	03/09/01	.....	500,000	Up to 60 mos	70	1
84.324T Model Demonstration Projects for Children with Disabilities.	01/19/01	03/16/01	.....	.....	Up to 48 mos	50	21
Focus Area 1: First two 12-month funding periods.	.....	.....	.....	150,000	.....	.....	.....
Focus Area 1: Final two 12-month funding periods.	.....	.....	.....	75,000	.....	.....	.....
Focus Areas 2 and 3	.....	.....	.....	180,000	.....	.....	.....
84.324W Improving Post School Outcomes: Identifying and Promoting What Works.	01/19/01	03/09/01	.....	600,000	Up to 36 mos	70	1
84.326H National Clearinghouse on Postsecondary Education.	01/19/01	03/09/01	05/08/01	500,000	Up to 60 mos	70	1
84.326T National Technical Assistance Project for Infants, Toddlers, and Children Who Are Deaf-Blind.	01/19/01	03/09/01	05/08/01	1,700,000	Up to 60 mos	70	1
84.327C Video Description	01/19/01	03/09/01	05/08/01	350,000	Up to 36 mos	50	2
84.327E Accessible Education TV.	01/19/01	03/16/01	05/15/01	225,000	Up to 36 mos	50	5
84.327N Open-Captioned Educational Media: Selection, Captioning and Distribution.	01/19/01	03/09/01	05/08/01	3,350,000	Up to 60 mos	80	1
84.327S Closed Captioned Daytime Television Programs.	01/19/01	3/23/01	05/23/01	200,000	Up to 36 mos	50	5
84.327X Research Institute on Technology for Early Intervention.	01/19/01	03/30/01	05/30/01	500,000	Up to 60 mos	70	1

* Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. We will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

** Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the ''Page Limit'' requirements included under each priority description and the page limit standards described in the ''General Requirements'' section. We will reject and will not consider an application that does not adhere to this requirement.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo/nara/index.html

Program Authority: 20 U.S.C. 1405, 1461, 1472, 1474, and 1487.

Dated: January 10, 2001.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 01–1241 Filed 1–19–01; 8:45 am]

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Federal Register

Monday,

January 22, 2001

Part IV

Environmental Protection Agency

40 CFR Parts 9 and 435

Effluent Limitations Guidelines and New Source Performance Standards for the Oil and Gas Extraction Point Source Category; OMB Approval Under the Paperwork Reduction Act: Technical Amendment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 435

[FRL–6929–8]

RIN 2040–AD14

Effluent Limitations Guidelines and New Source Performance Standards for the Oil and Gas Extraction Point Source Category; OMB Approval Under the Paperwork Reduction Act: Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; technical amendment.

SUMMARY: EPA is publishing final regulations establishing technology-based effluent limitations guidelines and standards for the discharge of synthetic-based drilling fluids (SBFs) and other non-aqueous drilling fluids from oil and gas drilling operations into waters of the United States. Oil and gas extraction facilities generate cuttings wastes from drilling operations. This regulation applies to existing and new sources that perform oil and natural gas extraction drilling in certain offshore and coastal waters. The final rule allows a controlled discharge of SBF-cuttings anywhere offshore of Alaska and offshore of the rest of the United States beyond three miles from shore. This regulation prohibits discharge of such fluids in coastal Cook Inlet, Alaska, unless certain findings are made by the permit authority. The final rule prohibits the discharge of SBFs not associated with drill cuttings into all waters of the United States.

Compliance with this rule is estimated to reduce the annual discharge of cuttings by 118 million pounds per year for new and existing sources. This rule will also lead to a decrease of 2,927 tons of air emissions and 200,817 barrels of oil equivalent (BOE) per year for new and existing sources. EPA estimates that the rule will result in annual savings of $48.9 million and no adverse economic impacts to the industry as a whole. EPA also incorporated Best Management Practices (BMPs) into the final rule to provide industry with additional flexibility in meeting today's final rule. In compliance with the Paperwork Reduction Act (PRA), this action also makes a technical amendment to the table in part 9 that lists the Office of Management and Budget (OMB) control numbers issued under the PRA for today's final rule. EPA is amending part 9 to include the OMB control number for the information collection requirements associated with the BMPs promulgated in today's final rule.

DATES: This regulation shall become effective February 21, 2001. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Time on February 5, 2001, as provided in 40 CFR 23.2. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Office of Federal Register as of February 21, 2001.

ADDRESSES: The public record is available for review in the EPA Water Docket, East Tower Basement, Room EB–57, 401 M St. SW., Washington, DC 20460. The public record for this rule has been established under docket number W–98–26, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Mr. Carey A. Johnston at (202) 260–7186 or send E-mail to: johnston.carey@epa.gov. For additional economic information contact Mr. James Covington at (202) 260–5132 or send E-mail to: covington.james@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Facilities engaged in the drilling of wells in the oil and gas industry in areas defined as ''coastal'' or ''offshore'' and discharging in geographic areas where drilling wastes are allowed for discharge (anywhere offshore of Alaska and offshore of the rest of the United States beyond three miles from shore, and the coastal waters of Cook Inlet, Alaska). Includes certain facilities covered under Standard Industrial Classification code 13 and North American Industrial Classification System codes 211111 and 213111.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 435 (*see* §§ 435.10 and 435.40). If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Compliance Dates

Deadlines for compliance with Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), and Best Available Technology Economically Achievable (BAT) are established in National Pollutant Discharge Elimination System (NPDES) permits. A new source must comply with New Source Performance Standards (NSPS) on the date the new source commences discharging.

Technical Amendments to Part 9

EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under today's final rule. The affected regulations are codified at 40 CFR part 9. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical

nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment. As a result of today's technical amendment pertaining to BMPs, EPA is now authorized under the Paperwork Reduction Act to conduct or sponsor the information collection requirements in 40 CFR 435.13, 435.15, 435.43, and 435.45.

Supporting Documentation

The rules promulgated today are supported by several major documents:

1. ''Economic Analysis of Final Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category'' (EPA–821–B–00–012). Hereafter referred to as the SBF Economic Analysis, this document presents the analysis of compliance costs and/or savings; facility closures; and changes in rate of return. In addition, impacts on employment and affected communities, foreign trade, specific demographic groups, and new sources also are considered.

2. ''Development Document for Final Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category'' (EPA–821–B–00–013). Hereafter referred to as the SBF Development Document, the document presents EPA's technical conclusions concerning the promulgated rules. This document describes, among other things, the data collection activities, the wastewater treatment technology options, effluent characterization, effluent reduction of the wastewater treatment technology options, estimate of costs to the industry, and estimate of effects on non-water quality environmental impacts.

3. ''Environmental Assessment of Final Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category'' (EPA–821–B–00–014). Hereafter referred to as the SBF Environmental Assessment, the document presents the analysis of water quality impacts for each regulatory option. EPA describes the environmental characteristics of SBF drilling wastes, types of anticipated impacts, and pollutant modeling results for water column concentrations, pore water concentrations, and human health effects via consumption of affected seafood.

4. ''Statistical Analyses Supporting Final Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category'' (EPA–821–B–00–015). Hereafter referred to as the SBF Statistical Support Document, this document presents analyses of retention on cuttings of SBF. EPA describes the performance characteristics of cuttings treatment technologies and calculates summary statistics for use as numerical limits.

How To Obtain Supporting Documents

All documents are available from the National Service Center for Environmental Publications, PO Box 42419, Cincinnati, OH 45242–2419, (800) 490–9198. The supporting technical documentation (*e.g.*, SBF Development Document) and previous technical documentation and Federal Register notices can also be obtained on the Internet, located at WWW.EPA.GOV/OST/GUIDE. This website also links to an electronic version of today's final rule.

Overview

This preamble includes a description of the legal authority for these final regulations; a summary of the final regulations; background information on the industry and its processes; a description of the technical and economic methodologies and data used by EPA to develop these regulations; and a summary of EPA responses to major comments received on the Proposal (February 3, 1999; 64 FR 5488) and Notice of Data Availability (April 21, 2000; 65 FR 21548). The definitions, acronyms, and abbreviations used in this preamble are defined in Appendix A.

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Appendix A: Definitions, Acronyms, and Abbreviations Used in This Preamble

I. Legal Authority

EPA is promulgating these regulations under the authority of sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361. The technical amendment to part 9 is promulgated under the authority of 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

II. Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System (''NPDES'') permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA

Section 304(b)(1)(A) of the CWA requires EPA to identify effluent reductions attainable through the application of, ''best practicable control technology currently available for classes and categories of point sources.'' Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher levels of control than any currently in place if the technology to achieve those levels can be practicably applied (*see* A Legislative History of the Federal Water Pollution Control Act Amendments of 1972, U.S. Senate Committee of Public Works, Serial No. 93–1, January 1973, p. 1468).

In addition, CWA Section 304(b)(1)(B) requires a cost assessment for BPT limitations. In determining the BPT limits, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology unless the required additional reductions are ''wholly out of proportion to the costs of achieving such marginal level of reduction.'' (*see* Legislative History, op. cit. p. 170). Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms (*e.g.*, American Iron and Steel Institute v. EPA, 526 F. 2d 1027 (3rd Cir., 1975)).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water.

2. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

The CWA establishes BAT as a principal means of controlling the discharge of toxic and non-conventional pollutants. In general, BAT effluent limitations guidelines represent the best existing economically achievable performance of direct discharging plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the processes employed, engineering aspects of the control technology, potential process changes, non-water quality environmental impacts (including energy requirements), and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded to these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, the achievability is determined on the basis of the total cost to the industrial subcategory and the overall effect of the rule on the industry's financial health. BAT limitations may be based upon effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may be based upon technology transferred from a different subcategory within an industry or from another industrial category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

3. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. BCT is not an additional limitation, but replaces Best Available Technology (BAT) for control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part ''cost-reasonableness'' test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

4. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the greatest degree of effluent reduction attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.,* conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for implementing categorical pretreatment standards, are found at 40 CFR part 403. Those regulations contain a definition of pass through that addresses localized rather than national instances of pass through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

6. Pretreatment Standards for New Sources (PSNS)—Section 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

7. Best Management Practices (BMPs)

Sections 304(e), 308(a), 402(a), and 501(a) of the CWA authorize the Administrator to prescribe BMPs as part of effluent limitations guidelines and standards or as part of a permit. EPA's BMP regulations are found at 40 CFR 122.44(k). Section 304(e) of the CWA authorizes EPA to include BMPs in effluent limitations guidelines for certain toxic or hazardous pollutants for the purpose of controlling ''plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.'' Section 402(a)(1) and NPDES regulations (40 CFR 122.44(k)) also provide for best management practices to control or abate the discharge of pollutants when numeric limitations and standards are infeasible. In addition, section 402(a)(2), read in concert with section 501(a), authorizes EPA to prescribe as wide a range of permit conditions as the Administrator deems appropriate in order to ensure compliance with applicable effluent limitations and standards and such other requirements as the Administrator deems appropriate.

8. CWA Section 304(m) Requirements

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for: (1) Reviewing and revising existing effluent limitations guidelines and standards; and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised effluent guidelines for several industry categories, including the oil and gas extraction industry. Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (*NRDC et al.* v. *Browner,* Civ. No. 89–2980). On January 31, 1992, the Court entered a consent decree (the ''304(m) Decree''), which establishes schedules for, among other things, EPA's proposal and promulgation of effluent guidelines for a number of point source categories. The most recent Effluent Guidelines Plan was published in the **Federal Register** on August 31, 2000 (65 FR 53008). This plan requires, among other things, that EPA take final action regarding the Synthetic-Based Drilling Fluids Guidelines by December 2000.

B. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Public Law 101–508, November 5, 1990) ''declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *'' (Sec. 6602; 42 U.S.C. 13101 (b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. The PPA directs the Agency to, among other things, ''review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction'' (Sec. 6604; 42 U.S.C. 13103(b)(2)). EPA reviewed this effluent guideline for its incorporation of pollution prevention.

According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants, or residuals at the source, usually within a process. The term source reduction ''include(s) equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. The term ''source reduction'' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service.'' 42 U.S.C. 13102(5). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

In these final regulations, EPA supports pollution prevention technology by encouraging the appropriate use of synthetic-based drilling fluids (SBFs) based on the use of base fluid materials in place of traditional: (1) Water-based drilling fluids (WBFs); and (2) oil-based drilling fluids (OBFs) consisting of diesel oil/or and mineral oil. The appropriate use of SBFs in place of WBFs will generally lead to more efficient and faster drilling and a per well reduction in non-water quality environmental impacts (including energy requirements) and discharged pollutants. Use of SBFs may also lead to a reduced demand for new drilling rigs and platforms and development well drilling though the use directional and extended reach drilling. Discharges from SBF-drilling operations have lower aqueous and

sediment toxicities, lower bioaccumulation potentials, and faster biodegradation rates as compared to OBFs. In addition, polynuclear aromatic hydrocarbons (PAHs), including those which are priority pollutants, which are constituents in OBFs are not present in SBFs.

EPA considered a ''zero discharge'' requirement (*i.e.,* BAT/NSPS Option 3) for SBF-cuttings wastes and determined that under this requirement most operators would decrease the use of SBFs in favor of OBFs and WBFs due to lower OBF and WBF drilling fluid unit costs. EPA concluded that a zero discharge requirement for SBF-cuttings and the subsequent increased use of OBFs and WBFs would result in: (1) Unacceptable non-water quality environmental impacts (NWQIs); and (2) more pollutant loadings to the ocean due to operators switching from SBFs to less efficient WBFs.

The appropriate use of SBF in place of OBF will generally shorten the length of the drilling project and eliminate the need to barge to shore or re-inject OBF-waste cuttings, thereby reducing NWQI such as fuel use, air emissions, and land disposal of OBFs. The controlled discharge option also eliminates the risk of OBF and OBF-cuttings spills and cross-media contamination at land disposal operations. Operators would be increasing the toxicity of their drilling fluids and wastes by using OBFs in place of SBFs. As stated in April 2000 (65 FR 21557), EPA used SBF and OBF spill data in the final rule as a factor in supporting a controlled discharge option. U.S. Department of Interior, Minerals Management Service (MMS) spill data show that riser disconnects in deep water drilling can release approximately 2,400 barrels of neat SBF and these incidences occur in deep water on average two to three times per year due to riser failure (Docket No. W–98–26, Record No. IV.B.a.3). Riser disconnects in the deep water are a particular concern due to: (1) Increased riser tensioning; (2) deep water technical requirements (*e.g.,* riser verticality, increased use of top drive systems, multiple flex joints in riser, placement of well heads and upper casing sections in soft sea beds); and (3) deep water ocean environments (*e.g.,* uncharted eddy and loop currents) (Docket No. W–98–26, Record No. IV.B.a.4; Record No. IV.B.a.5). Use of WBFs in place of SBFs would also lead to: (1) An increase in NWQIs due to the increased length of the drilling project; and (2) a per well increase pollutants discharged due to poorer technical performance of WBFs. For these primary reasons, EPA rejected the zero discharge option.

In addition, the technology controls in the final regulation are based on a more efficient solids control technology to increase recycling of SBF in the drilling operation. Increased SBF recycling reduces the quantity of SBF required for drilling operations and the quantity of SBF discharged with drill cuttings. A discussion of this pollution prevention technology is contained in Section V.A of this preamble and in the SBF Development Document.

C. Profile of Industry

1. Well Drilling Process Description

The SBF Development Document presents a thorough description of the industry including drilling practices, solids control systems, and waste disposal operations. The following summary is excerpted from that technical document.

Drilling occurs in two phases: exploration and development. Exploration activities are those operations involving the drilling of wells to locate hydrocarbon bearing formations and to determine the size and production potential of hydrocarbon reserves. Development activities involve the drilling of production wells once a hydrocarbon reserve has been discovered and delineated.

Drilling for oil and gas is generally performed by rotary drilling methods which use a circularly rotating drill bit that grinds through the earth's crust as it descends. Drilling fluids are pumped down through the drill bit via a pipe that is connected to the bit, and serve to cool and lubricate the bit during drilling. The rock chips that are generated as the bit drills through the earth are termed ''drill cuttings'' or simply ''cuttings.'' The drilling fluid also serves to transport the drill cuttings back up to the surface through the space between the drill pipe and the well wall (this space is termed the annulus), in addition to controlling downhole pressure and stabilizing the well bore.

As drilling progresses, large pipes called ''casing'' are inserted into the well to line the well wall. Drilling continues until the hydrocarbon bearing formations are encountered. In areas where drilling fluids and drill cuttings are allowed to be discharged under the current regulations, well depths range from approximately 4,000 to 12,000 feet deep, and it takes approximately 20 to 60 days to complete drilling.

On the surface, the drilling fluid and drill cuttings undergo an extensive separation process to remove fluid from the cuttings. The fluid is then recycled into the system, and the cuttings become a waste product. The drill cuttings retain a certain amount of the drilling fluid that are discharged or disposed with the cuttings. Drill cuttings are discharged by the shale shakers and other solids separation equipment (*e.g.,* decanting centrifuges, mud cleaners, cuttings dryers). Drill cuttings are also cleaned out of the mud pits and from the solid separation equipment during displacement of the drilling fluid system (*i.e.,* accumulated solids). Intermittently during drilling, and at the end of the drilling process, drilling fluids may become wastes if they can no longer be reused or recycled.

In the relatively new area of ultra-deep water drilling (*i.e.,* water depths greater than 3,000 feet), new drilling methods are evolving which can significantly improve drilling efficiencies and thereby reduce NWQIs (*e.g.,* fuel, steel casing consumption, air emissions) and the per well amount of pollutants discharged. Subsea drilling fluid boosting, referred to as ''dual gradient drilling,'' is one such new drilling technology. Dual gradient drilling is similar to traditional rotary drilling methods as previously described with the exception that the drilling fluid is energized or boosted by use of a pump at or near the seafloor. By boosting the drilling fluid, the adverse effect on the wellbore caused by the drilling fluid pressure from the seafloor to the surface is eliminated, thereby allowing wells to be drilled with as much as a 50% reduction in the number of casing strings generally required to line the well wall. As a result of the reduced number of casing strings, dual gradient wells can be drilled almost one-third faster and with smaller hole sizes than conventional deep water drilling. Smaller hole sizes and faster drilling translate into fewer pollutants being discharged to the ocean and fewer NWQI. Dual gradient drilling technology can also potentially eliminate or reduce the amount of whole drilling fluid released to the environment during an inadvertent riser disconnect. Finally, dual gradient drilling technology can greatly reduce the potential release of drilling fluid when drilling through shallow sand intervals (*e.g.,* shallow water flow) (Docket No. W–98–26, Record No. IV.B.a.6).

Some dual gradient drilling systems require the separation of the largest cuttings (*e.g.,* larger than approximately ¼ inch) at the seafloor since these cuttings may interfere with the rotatory action of subsea pumps (*e.g.,* electrical

submersible pumps). The larger cuttings are routed at the seafloor to a venturi action pump (with no moving parts), mixed with seawater, and pumped to a cuttings discharge hose at the seafloor within a 300 foot radius of the well site. The hose is perforated on the last 50 ft of its length to maximize the spread of cuttings. The action of pumping cuttings with seawater can be expected to have some cleaning and dispersion effect. A remotely operated vehicle (ROV) can also be used to reposition the subsea discharge hose to maximize cuttings dispersal. Representative samples of drill cuttings discharged at the seafloor can be transported to the surface by a ROV for purposes of monitoring. The drilling fluid, which is boosted at the seafloor and transports most of the drill cuttings (*e.g.,* 95–98% of total cuttings generated) back to the surface, is processed as described in the general rotary drilling methods described above in this section.

A commercial potential determination is made at the completion of rotary drilling (*i.e.,* once the target oil or natural gas formations have been reached). The well is then made ready for production by a process termed ''completion.'' Completion involves cleaning the well to remove drilling fluids and debris, perforating the casing that lines the producing formation, inserting production tubing to transport the hydrocarbon fluids to the surface, and installing the surface wellhead. The well is then ready for production (*i.e.,* actual extraction of hydrocarbons).

2. Location and Activity

This rule establishes effluent limitations guidelines and standards that control discharges of SBF and SBF-cuttings throughout the Offshore subcategory beyond three miles from shore, except for Offshore Alaska where no three mile restriction applies. This rule prohibits discharge of SBF and SBF-cuttings in Upper (Coastal Subcategory) Cook Inlet, Alaska, unless operators meet criteria demonstrating that they are unable to: (1) Box and store their cuttings on-site for zero discharge cuttings transfer operations (*i.e.,* haul to shore for land disposal or re-injection at another rig or platform); or (2) re-inject their SBF-cuttings on-site. When Coastal Cook Inlet, AK, operators demonstrate to the NPDES controlling authority that they are unable to achieve zero discharge of their SBF-cuttings, they may discharge their SBF-cuttings under the same controls as exist for SBF-cuttings discharges in Offshore waters. Criteria for establishing when operators cannot achieve zero discharge are established in the final regulation. SBF-cuttings discharged in Offshore Cook Inlet, Alaska, are controlled in the same manner as other SBF-cuttings in other Offshore waters. This rule does not amend the requirements for zero discharge of drilling fluids and drill cuttings where they have already been prohibited from discharge.

Drilling is currently active in three regions: (1) The offshore waters beyond three miles from shore in the Gulf of Mexico (GOM); (2) offshore waters beyond three miles from shore in California; and (3) Cook Inlet, Alaska. Most drilling activity occurs in the GOM, where 1,302 wells were drilled in 1997, compared to 28 wells drilled in California and 7 wells drilled in Cook Inlet. In the GOM, over the last few years, there has been high growth in the number of wells drilled in deep water (*e.g.,* water depths greater than 1,000 feet). For example, in 1995, 84 wells were drilled in deep water, comprising 8.6% of all GOM wells drilled that year. By 1997, that number increased to 173 deep water wells drilled and comprised over 13% of all GOM wells drilled. Most recent 1999 data show that this trend is continuing as over 15% of all GOM wells drilled were in deep water. The increased activity in deep water increases the usefulness of SBFs. Operators drilling in deep water cite the following factors for selecting SBFs over WBFs and OBFs: (1) Potential for riser disconnect (*i.e.,* inadvertent releases of drilling fluid) in floating drill ships, which favors SBF over OBF; (2) higher daily drilling cost which more easily justifies use of more expensive SBFs over WBFs; and (3) greater distance to barge drilling wastes that may not be discharged (*i.e.,* OBFs, WBFs that fail the SPP Toxicity Test as currently required by EPA in Appendix 2 to Subpart A of 40 CFR part 435).

3. Drilling Wastestreams

Drilling fluids and drill cuttings are a major source of waste from exploratory and development well drilling operations. This final regulation establishes limitations for both the drilling fluid and the drill cuttings wastestream when SBFs are used. All other wastestreams and drilling fluids (*e.g.,* WBFs, OBFs) already have limitations; those limitations are outside the scope of this rule. The characteristics of both drilling fluids and drill cuttings wastestreams are summarized in Section V.A of this preamble. A more detailed discussion of the origins and characteristics of these wastes is also included in the SBF Development Document.

D. Proposed Rule

On February 3, 1999 (64 FR 5488), EPA published proposed effluent limitations guidelines for the discharge of SBF drilling fluids and drill cuttings into waters of the United States by existing and new facilities in the oil and gas extraction point source category.

EPA received comments on many aspects of the proposal. The majority of comments related to: (1) The proposed analytical test methods for stock and discharge limitations; (2) equipment used to set BAT and NSPS cuttings retention limitations; (3) Best Management Practices (BMPs) and their use to control small volume spills and releases of SBF; (4) the proposal's engineering and economic modeling parameters; and (5) procedural and definition issues. EPA evaluated all of these issues based on additional information collected by EPA or received during the comment period. EPA then discussed the results of these evaluations in a Notice of Data Availability which is discussed below.

E. Notice of Data Availability

On April 21, 2000 (65 FR 21548), EPA published a Notice of Data Availability (NODA) to present a summary of new data received in comments on the proposed rule or collected by EPA following publication of the proposal. In the April 2000 NODA, EPA discussed the major issues and presented several revised modeling and alternative approaches to address these issues. EPA solicited comment on the data collected since proposal and on the revised modeling and alternative approaches to manage SBF discharges.

III. Summary of Data and Information Received in Response to the Notice of Data Availability

The April 2000 NODA summarized the data and information received by EPA in response to the February 1999 proposal and information received before the April 2000 NODA. This section describes the data received by EPA in response to the April 2000 NODA.

A. Pollutant Loading and Numeric Limit Analyses

1. SBF Retention on Cuttings

SBF retention on cuttings (ROC) data quantify the amount of SBF retained on cuttings (mass of SBF/mass of wet cuttings, expressed as a percentage). Lower ROC values indicate less SBF retained on cuttings. EPA uses ROC data, along with other engineering factors (*e.g.,* installation requirements, fluid rheology) to evaluate the

performance of various solids control technologies.

In response to the February 1999 proposal, industry submitted data for SBF ROC from 36 wells. EPA determined that 16 files were complete and accurate, and these data were presented in the April 2000 NODA. EPA rejected six files due to incomplete reporting. EPA received 14 files too late for inclusion in the April 2000 NODA analyses.

In response to the April 2000 NODA, EPA received and evaluated ROC data from an additional 79 SBF wells: the 14 received after the February 1999 proposal comment period; 27 additional sets received during the April 2000 NODA comment period; and 38 received after the April 2000 NODA comment period. EPA determined that data from 49 of these 79 wells were complete for inclusion in the final rule analyses. Therefore, EPA used data from 65 wells to determine the ROC performance of the various solids control technologies. The collection, engineering review, and extraction of data from these files are described in the SBF Development Document.

EPA revised the average ROC values of various solids control technologies based on the final ROC data. These revised average ROC values were combined to yield the average ROC value for the following three SBF-cuttings technology options: (1) BAT/NSPS Option 1 is based on the use of shale shakes, cuttings dryer, fines removal unit, and discharges from the cuttings dryer and fines removal unit and has a long-term average ROC value of 4.03%; (2) BAT/NSPS Option 2 is based on the use of shale shakes, cuttings dryer, and fines removal unit, and one discharge from the cuttings dryer, and has a long-term average ROC value of 3.82%; and (3) BAT/NSPS Option 3 is based on the use of shale shakes, cuttings boxes, barges, and zero discharge land disposal and offshore re-injection and has a long-term average ROC value of 10.2%. In addition, using the ROC data, EPA developed a BAT limitation and standard controlling the base fluid retained on cuttings for drilling fluids with the environmental performance of esters (*e.g.,* biodegradation, sediment toxicity). EPA developed this option to provide operators an incentive to use ester-based SBFs and has a long-term average ROC value of 4.8%. EPA used the ROC data to establish a BAT limitation and a NSPS on base fluid retained on cuttings. The base fluid retained on cuttings limitation and standard both incorporate the variability of solids control efficiencies and are higher than the long term average.

2. Days to Drill

EPA uses the number of days to drill the SBF interval, for all four model wells, as an input parameter in the NWQI and cost analysis. EPA extracted relevant data from each of the 65 wells identified above to estimate the number of days to drill each of the four model well SBF intervals (Docket No. W–98–26, Record No. IV.B.a.7). The revised numbers of days required to drill the SBF model wells are based on a revised average rate of SBF-cuttings generation (*i.e.,* 108.7 bbls wet cuttings/day). The revised numbers of days required to drill the SBF model wells are: (1) 5.2 days for shallow-water development wells (SWD); (2) 10.9 days for shallow-water exploratory wells (SWE); (3) 7.9 days for deep-water development wells (DWD); and (4) 17.5 days for deep-water exploratory wells (DWE).

3. Well Count Projections Over Next Five Years

EPA revised well count projections for Offshore GOM, Offshore California, and Cook Inlet, AK, based on information submitted by industry (Docket No. W–98–26, Record No. IV.B.a.9; Record No. IV.B.a.10; Record No. IV.B.a.11). The revised annual well counts are 1,047 shallow water wells and 138 deep water wells in Offshore GOM; 7 shallow water wells and no deep water wells in Offshore California; and 6 shallow water wells and no deep water wells in Cook Inlet, AK. These revised well counts are not significantly different from the well counts used in the February 1999 proposal and April 2000 NODA (*i.e., see* SBF Proposal Development Document (EPA–821–B–98–021), Table IV–2: 1,022 shallow water wells and 139 deep water wells across the GOM, Offshore California, and Cook Inlet, AK).

Industry only provided the well counts in terms of shallow water versus deep water wells. EPA further divided the revised well counts into development and exploratory well category counts for estimating pollutant loadings, compliance costs, and NWQIs. EPA performed this allocation using prior well count data from the April 2000 NODA. EPA derived percentages of development versus exploratory wells for both shallow water well types and deep water well types. EPA then applied these percentages to the revised aggregated shallow water and deep water well counts provided by industry. EPA also collected additional washout rates for WBF and SBF drilling.

EPA also revised well count projections to reflect enhanced directional drilling capabilities when using SBF. EPA received information that SBF directional drilling can reduce the number of wells required to drill a development well project. Specifically, industry stated that SBF development drilling can generally reduce the drilled footage required for full development of a typical reservoir by one-third as compared with WBF drilling (Docket No. W–98–26, Record No. IV.B.a.9). EPA has included this consideration by reducing the footage drilled by one-third for WBF development wells projected to convert from WBF to SBF under the two controlled discharge options.

4. Current and Projected OBF, WBF, and SBF Use Ratios

For the February 1999 proposal and April 2000 NODA, EPA estimated that 80% of the average annual GOM wells are drilled using WBF exclusively; 10% are drilled with SBF; and 10% are drilled with OBF. EPA also included in well counts estimates of operators converting from OBF to SBF or SBF to OBF under each of the SBF-cuttings controlled discharge options.

For the final rule, EPA revised the relative frequency of use between WBF, OBF, and SBF under the two discharge options and the zero discharge option based on data submitted by industry (Docket No. W–98–26, Record No. IV.B.a.9; Record No. IV.B.a.10; Record No. IV.B.a.11). Industry supplied this information to EPA in several formats. EPA used the most reliable information (*e.g.,* the actual well count data for WBF, OBF, and SBF wells over a period of three years) to estimate drilling fluid use under each of the SBF-cuttings control options (*see* SBF Development Document).

EPA believes that some operators would switch from WBFs to SBFs for certain wells due to the increased efficiency of SBF drilling. While no good industry average statistics exist, it is generally considered that SBFs reduce overall drilling time by 50% (*e.g.,* if a well took 60 days to drill with WBF, the same well should be able to be drilled with SBF in 30 days) (Docket No. W–98–26, Record No. IV.B.a.9; Record No. IV.B.a.10; Record No. IV.B.a.11). Reducing drilling time generally reduces drilling costs. However, not all drilling operators will switch from WBFs to SBF due to a variety of other factors, (*e.g.,* WBFs are less expensive (per barrel) than SBFs, potential for lost circulation downhole).

Additionally, EPA believes that under the SBF-cuttings zero discharge option, not all operators would switch from

SBFs to OBFs but that some operators would switch to WBFs. Some drilling operations require the technical performance of non-aqueous drilling fluids and operators must select either an OBF or SBF. Therefore, for these drilling operations, operators would select OBFs in place of SBF under the SBF-cuttings zero discharge option as OBFs are less expensive (per barrel) than SBFs. However, some drilling operations could use either WBFs or oleaginous drilling fluids such as OBFs, enhanced mineral oil based drilling fluids, or SBFs. Depending on a variety of site specific factors (*e.g.,* formation characteristics, directional drilling requirements, torque and drag requirements), operators may select WBFs in lieu of SBFs or OBFs under the SBF-cuttings zero discharge option.

5. Waste Volumes and Characteristics

EPA collected additional data to identify the volumes and characteristics of WBF discharges. This additional data more adequately describes the total amount of pollutants loadings and NWQI under each of the three SBF-cuttings management options. For example, under the SBF zero discharge option (BAT/NSPS Option 3) operators would more likely choose WBF and OBF over SBF due primarily to the relatively higher unit cost of SBF.

Different pollutant loadings and NWQI are expected for WBF as compared with either OBF or SBF wells based on differences in washout and length of drilling time. EPA anticipates a reduction in cuttings waste volume when comparing SBF-drilling to WBF-drilling based on greater hole washout (*i.e.,* enlargement) in WBF drilling. Industry estimated that WBF washout percentages vary between 25% and 75%, with 45% being an acceptable average and confirmed EPA's SBF and OBF washout percentage of 7.5% as appropriate (Docket No. W–98–26, Record No. IV.B.a.9).

For the final rule, EPA also estimated that the barite used in SBF drilling is nearly pure barium sulfate (*i.e.,* $BaSO_4$) and, by gravimetric analysis, calculated the weight percentage of barium in barite as 58.8%.

B. Compliance Costs Analyses

1. Equipment Installation and Downtime

For the April 2000 NODA, projected compliance costs for all options included equipment installation and downtime for each SBF well drilled. After further review of ROC data wells (*see* Section III.A), EPA modified this parameter in the final analyses to reflect current practice of drilling multiple wells per year for any one equipment installation (Docket No. W–98–26, Record No. IV.B.a.9). EPA reviewed the ROC well data for the frequency of multiple wells on specified structures. EPA used the resulting well-per-structure analysis to adjust projected annual SBF compliance costs by including the consideration of drilling more than one SBF well per equipment installation per year. EPA estimated that 2.2 development wells per structure and 1.6 exploratory wells per structure are current industry practice, based on industry-submitted data (*see* SBF Development Document).

EPA received information on the ability of operators to install cuttings dryers (*e.g.,* vertical or horizontal centrifuges, squeeze press mud recovery units, High-G linear shakers) on existing GOM rigs (Docket No. W–98–26, Record No. IV.B.b.33). While some industry sources filed timely comments alleging that some rigs could not accommodate additional solids control equipment, in late comments, industry provided data concerning the number of GOM rigs in operation which are not capable of having a cuttings dryer system installed due to either rig space and/or rig design without prohibitive costs or rig modifications.

EPA also received information on a new cuttings containment, handling, and transfer equipment system. The new system is designed to eliminate the need to use cuttings boxes to handle cuttings. EPA received information from one operator that recently field tested the cuttings transfer system on one 12¼ inch well section in the North Sea. The operator contained 100% of the cuttings on a rig (Alba) with limited deck space. Cuttings were handled in bulk below deck and pumped directly onto a waiting vessel for eventual land disposal. The operator estimated that use of the new cuttings transfer system eliminated hundreds of crane lifts and manual handling issues and thereby improved worker safety.

2. Current Drilling Fluid Costs

In response to the April 2000 NODA, EPA revised unit costs of WBF, OBF, and SBF. Based on industry data, EPA used the WBF unit cost of $45 per barrel for the final rule. The February 1999 Proposal and April 2000 NODA used OBF and SBF unit costs of $75 and $200 per barrel of drilling fluid, respectively. Industry data indicates a range of OBF unit costs from $70–$90 per barrel and EPA used the OBF unit cost of $79 per barrel for the final rule. EPA estimates that SBF unit costs will remain between $160 to $300 per barrel of drilling fluid over the next few years. EPA used an SBF unit cost of $221 per barrel of drilling fluid for the final rule based on the most frequently used SBF in the offshore market.

3. Cost Savings of SBF Use as Compared With WBF Use

EPA revised its compliance costs to include the following factors: (1) The cost savings associated with increased rate of penetration when using SBF as compared to WBF; and (2) the cost of lost WBFs that are discharged while drilling. EPA also examined, but did not include in its final compliance cost impacts, the costs associated with projected failures of a fraction of WBF wells to meet sheen or toxicity limitations, including costs of meeting zero discharge from these wells. EPA used this data to examine compliance costs impacts if operators switch from SBF to WBF drilling, or vice versa.

EPA requested data from industry on rate of penetration (ROP) for WBF operations as compared to SBF operations. Industry stated that ROP values of 300 feet per hour for SBF (and OBF) operations and 150 feet per hour for WBF are reasonable averages. However, using these values over an entire well was not recommended ''due to the large number of variables'' (Docket No. W–98–26, Record No. IV.B.a.9). Industry's information further states that a generally-accepted estimate is that ''SBFs reduce overall drilling time by 50%'' (Docket No. W–98–26, Record No. IV.B.a.9).

4. Construction Cost Index

EPA used the Construction Cost Index (CCI) from the Engineering News and Record (*see* http://www.enr.com/cost/costcci.asp) to reflect costs in 1999 dollars rather than 1998 dollars as was used for the April 2000 NODA. EPA used a CCI factor of 1.108 to reflect 1999 dollars and a base year of 1995.

C. Economic Impacts Analyses

For the final rule, EPA obtained and used MMS data on drilling through 1999 to identify any new firms operating in the offshore GOM and determine which firms were involved in deep water drilling operations. EPA identified 17 additional firms newly drilling in the GOM, of which 2 were identified as drilling in deep water. Of the new firms, 7 were identified as or assumed to be (for lack of data) small entities. One of these seven small firms was identified as a small entity drilling in deep water. This latter firm drilled two wells in the deep water in 1999.

EPA collected 1999 financial information on number of employees,

assets, equity, revenues, net income, return on assets, return on equity, and profit margin for the publicly held, newly identified firms. EPA also updated financial information for the publicly held firms identified in February 1999 proposal SBF Economic Analysis (EPA–821–B–98–020).

EPA also collected information on 13 GOM onshore sites where offshore oil and gas drilling waste is handled or disposed. This information consists of precise geographical location, amount of waste handled annually, and site capacity. This information was provided to EPA Region 6 for use in its environmental justice (EJ) computer model to screen for sites (*i.e.,* Tier 1 analysis) where disposal of additional drilling wastes under a zero discharge option might have environmental justice implications. EPA Tier 1 analyses identified that five of the thirteen onshore facilities warranted additional review.

D. Water Quality Impact and Human Health Analyses

In response to April 2000 NODA comments and information, EPA revised the water quality and human health analyses for the final rule based on: (1) Information on seabed surveys; (2) revised fish consumption rates; (3) information on Alaska state water quality standards; and (4) revised ROC data which affect EPA modeling of water quality, sediment quality, and human health impacts.

1. Seabed Surveys

EPA received public comments regarding the impact of SBF discharges on the benthic environment. Several seabed surveys were submitted to EPA together with the public comments. Information from two comments contained specific seabed survey data on sediment SBF concentrations after discharge of SBF cuttings. EPA included additional data from six wells in the calculation of mean SBF sediment concentration (at 100 meters from the modeled discharge) used in the water quality analysis. The mean SBF sediment concentration changed from 14,741 mg/kg as published in the April 2000 NODA to 9,718 mg/kg for modeled Gulf of Mexico wells and from 8,655 mg/kg to 13,052 mg/kg for wells modeled in Offshore California and Cook Inlet, Alaska.

EPA also received information on the on-going joint Industry/MMS GOM seabed survey. The Industry/MMS workgroup completed the first two cruises of the four cruise study in time for EPA's consideration for this final rule. Cruise 1 was a physical survey of 10 GOM shelf locations, with the objective of detection and delineation of cuttings piles using physical techniques. Cruise 2 was to scout and screen the final 5 shelf and 3 deep water GOM wells chosen for the definitive study where SBF were used. The SBF-cuttings discharges included either internal olefins or LAO/ester blends. Both cruises did not detect any large mounds of cuttings under any of the rigs or platforms. Remotely operated vehicles (ROV) using video cameras and side-scanning sonar were used to conduct the physical investigations on the seabed. Video investigations only detected small cuttings clumps (<6″) around the base of some of the facilities and 1″ thick cuttings accumulations on facility horizontal cross members. Outside of a 50–100′ radius from the facility, no visible cuttings accumulations (large or small) were detected at any of the facility survey sites.

Finally, EPA received a report prepared for the MMS which provided a review of the scientific literature and seabed surveys to determine the environmental impacts of SBFs (Docket No. W–98–26, Record No. IV.F.1). The literature report confirms EPA's position that benthic communities will recover as SBF concentrations in sediments decrease and sediment oxygen concentrations increase. The report also confirms EPA's position that within three to five years of cessation of SBF-cuttings discharges, concentrations of SBFs in sediments will have fallen to low enough levels and oxygen concentrations will have increased enough throughout the previously affected area that complete recovery will be possible.

2. Fish Consumption Rates

EPA revised the fish consumption rates for use in environmental assessment analyses. The consumption rates vary depending on the fish habitat location (*i.e.,* freshwater, estuarine, and marine). EPA used the marine only fish consumption rate for the finfish consumption health risk analysis for the Gulf of Mexico and Offshore California. EPA used the estuarine/marine consumption rate for the Cook Inlet, Alaska analysis. EPA used the estuarine/marine consumption rate for all regions in the shrimp consumption health risk analysis.

EPA also conducted an investigation into the environmental factors affecting Native subsistence foods in Cook Inlet. EPA has incorporated relevant information from this investigation into the SBF Environmental Assessment.

3. State Water Quality Standards

EPA evaluated the potential decrease of water quality from the regulatory discharge options and compared the pollutant concentrations to recommended Federal water quality criteria. For discharges occurring in Cook Inlet, Alaska, EPA also compared the receiving water quality to Alaska state water quality standards. EPA used the updated Alaska state standards for the water quality analysis for Cook Inlet, Alaska.

E. Non-Water Quality Environmental Impact Analyses

EPA received additional data affecting the NWQI analyses in response to the April 2000 NODA. These data include additional information on retention on cuttings and information regarding offshore injection and onshore disposal practices for each of the three geographical areas: Gulf of Mexico, Offshore California, and Cook Inlet, Alaska.

EPA revised the average SBF retention on cuttings for the discharge options based on additional ROC data. Revisions in ROC data affect the volume of SBF-cuttings generated. Consequently, EPA revised the amount of SBF-cuttings that will need to be treated under the two SBF-cuttings controlled discharge options (*e.g.,* BAT/NSPS Options 1 and 2). EPA also revised: (1) The amount of SBF-fines that will need to be re-injected on-site or hauled to shore for disposal under one of the SBF-cuttings controlled discharge option (*e.g.,* BAT/NSPS Option 2); and (2) the amount of SBF-fines and SBF-cuttings re-injected on-site or hauled to shore for disposal under the zero discharge option (BAT/NSPS Option 3).

EPA received additional SBF well interval data which was used to re-calculate the number of days to drill the model SBF wells (*see* Section III.B.). For the NWQI analyses, the number of days to drill the model wells serves as the basis for estimating the length of time equipment will be used to either treat the cuttings before discharge or the hauling requirements under the zero discharge option. The EPA NWQI models estimate that air emissions and fuel use rates increase when the time required to complete a model well also increases.

EPA obtained information regarding the current practice of zero discharge disposal for each of three geographic areas, Gulf of Mexico, Offshore California, and Cook Inlet, Alaska (*see* Section IV.D). Current practice indicates that most of the waste generated in the Gulf of Mexico and Offshore California

and brought to shore is injected onshore, whereas all of the waste currently generated in Cook Inlet is injected offshore at the drilling site or at a near-by Class II Underground Injection Control (UIC) disposal well. EPA also received from an on-shore injection facility specific equipment information, including the cuttings injection rate and cuttings grinding and injection equipment power requirements and fuel rates (Docket No. W–98–26, Record No. IV.D.2).

Industry provided EPA with information regarding SBF use (*see* Section III.A). One operator (Unocal) stated that it is starting to use SBF to drill the entire well and not just intervals in which WBFs present problems because drilling time can be significantly reduced. EPA incorporated this information into the NWQI analyses by estimating the reduction of impacts when using SBFs instead of WBFs. EPA also received during the April 2000 NODA comment period information related to the average increase in drilling time (1.5 days) in order to comply with zero discharge (Docket No. W–98–26, Record No. IV.A.a.3).

F. Compliance Analytical Methods

EPA completed additional studies in response to the April 2000 NODA to support the development of analytical methods for determining sediment toxicity, biodegradation, and oil retention on cuttings. For sediment toxicity and biodegradation, EPA focused specifically on optimizing test conditions (*e.g.,* test duration, sediment composition), discriminatory power, reproducibility, reliability, and practicality. EPA's sediment toxicity study provided toxicity data for both pure base fluids and standard mud formulations of these base fluids. EPA's biodegradation study evaluated the degradation of pure base fluids as determined by the solid phase test. For oil retention on cuttings, EPA conducted studies to verify and document the sensitivity of the retort test method.

During this same time period, industry sponsored Synthetic Based Muds Research Consortium (SBMRC) conducted parallel studies on the same three parameters (*i.e.,* sediment toxicity, biodegradation, and base fluid retention on cuttings). For sediment toxicity, industry provided extensive data comparing a 4-day versus a 10-day test duration, natural versus synthetic sediments, as well as toxicity data on both pure base fluids and mud formulations of these base fluids. For biodegradation, industry submitted results from the closed bottle and respirometry tests for biodegradation in addition to the solid phase test. For oil retention on cuttings, Industry and EPA conducted rig-based method detection limit studies.

IV. Summary of Revisions Based on Notice of Data Availability Comments

A summary of significant revisions to the analyses made by EPA in response to the February 1999 proposal is provided in the April 2000 NODA (*see* 65 FR 21549, Sections III and IV). This section describes the revisions to the analyses since publication of the April 2000 NODA.

A. Pollutant Loading Analyses

1. Loadings for Water-Based Drilling Fluids and Cuttings

For the final rule, EPA included the pollutant reductions (or increases) of the technology options based on operators switching from OBFs or WBFs to SBFs (or vice versa) and used data contained in the Offshore Development Document (EPA–821–R–93–003). Waste volume and/or pollutant loading data, on use of OBFs and WBFs presented in the Offshore Development Document, were expressed on a ''per bbl,'' ''per well,'' or a ''per day'' basis. Data from the Offshore rule record included: (1) WBF composition; (2) waste volumes for WBFs, OBFs, and associated cuttings; (3) the frequency of mineral oil use in WBF operations; and (4) the expected permit limitation failure rates (primarily for toxicity) on mineral oil fluids resulting in the requirement to haul or inject these wastes). These data then were applied to the current, revised well count projections and/or projected waste volumes to estimate discharge option loadings and the amount of OBFs, WBFs, and associated cuttings that require zero discharge under existing regulations (*e.g.,* OBFs containing diesel oil, WBFs that fail the SPP Toxicity Test). The Offshore Development Document provided information relevant to the inclusion of WBFs in the final analyses including: (1) Frequency of WBFs that failed permit limitations (Tables XI–10 and XI–7); (2) the composition of WBFs (Tables XI–3 and XI–6); (3) mineral oil composition (Table XI–5); and (4) the composition of cuttings from WBF (Section XI.3.4).

Industry-wide, regional, and total loadings were calculated for the loadings analyses for this final rule from the revised well counts provided by industry (Docket No. W–98–26, Record No. IV.B.a.9; Record No. IV.B.a.10; Record No. IV.B.a.11) combined with composition and estimated discharge volumes for WBFs (Offshore Development Document, Table XI–2).

In the final loadings analyses, EPA also corrected an error in the loading model used for the April 2000 NODA analyses. The error related to how EPA estimated the volume of fines from the fines removal unit captured and not discharged under BAT/NSPS Option 2. The volume of fines is based on many factors including the hole size, washout, and the percentage of the total wet cuttings produced from the solids control system that are fines. EPA incorrectly used the volume of dry cuttings per model well in the April 2000 NODA loading model to estimate the volume of fines generated from the BAT/NSPS Option 2 solids control system. The final loadings model correctly uses the volume of wet cuttings per model well to estimate the volume of fines generated from the BAT/NSPS Option 2 solids control system. The correction of the error had the effect of increasing the amount of fines captured for zero discharge under BAT/NSPS Option 2.

2. Drilling Fluid and Cuttings Composition and Density

The density of drilling wastes hauled in California was revised from 704 to 716 pounds per barrel to reflect the current density derived from the weight and volume data in the revised loadings model. This results in a change in the unit cost to haul waste in California to $12.53 and $5.89 per barrel for disposal and handling costs, respectively.

3. Days to Drill

EPA revised the number of drilling days based on data submitted in response to the April 2000 NODA for each of the four model well types. The number of drilling days input parameter affects NWQI and compliance costs (*e.g.,* equipment rental costs).

4. Directional Drilling

EPA also received additional data concerning the performance of SBF versus WBF for directional drilling operations (Docket No. W–98–26, Record No. IV.B.a.9). EPA used this information, the reduced number of wells and total footage of SBF-drilled development wells, to estimate pollutant loading reductions resulting from WBF to SBF conversions. For each of the two SBF-cuttings controlled discharge options (*i.e.,* BAT/NSPS Option 1 and 2), this revision reduced the annual sum total of discharged WBF and WBF-cuttings.

B. Compliance Cost Analysis

1. Costs of WBF

As stated above, EPA modified the cost analysis for the final rule to include WBF cost factors. The WBF cost factors that EPA considered include: (1) The cost of discharged WBFs and WBF associated with cuttings discharged onsite; (2) the projected occurrence of mineral oil spots and/or lubrication and the projected failure rate of these mineral oil-amended fluids to meet permit limitations on toxicity and subsequent requirement to re-inject these materials down hole or haul them for onshore disposal; and (3) the rig costs associated with increases or decreases of drilling time related to WBF-to-SBF or SBF-to-WBF conversions over the projected interval of SBF use.

The volumes of discharged WBF and associated cuttings were estimated on a per well basis from data contained in the Offshore Development Document (EPA–821–R–93–003) for Gulf of Mexico, California, and Cook Inlet, AK wells. A weighted average discharge volume for each region, based on volumes projected for shallow wells and deep wells and the projected number of wells for each, was derived to estimate the volume of fluids and cuttings discharged onsite, per well, from WBF operations. (**Note:** In the Offshore Development Document ''shallow'' and ''deep'' refer to well depth, and are not the same as ''shallow'' water and ''deep'' water wells which refer to water depth in this final rule.) The volume of adhering WBF on discharged cuttings, as contained in the Offshore Development Document, was estimated at 5% of the total cuttings volume. The costs for these discharged WBFs were then calculated from a per barrel estimate of average WBF cost. These per well costs were then applied to the well count data in this final rule to derive aggregate regional and total costs. Also, to assess lost fluid costs over the projected SBF drilling interval, for the zero discharge option, the average discharge volumes per well were recalculated as average discharge volumes per day, based on the assumed number of days (*i.e.,* 20 days) used in the Offshore Development Document for drilling WBF wells.

The projected incidences of WBF with mineral oil spots, mineral oil lubrication, or both mineral oil spot and lubrication were based on the Offshore Development Document estimates of the percentages of projected wells in each region, projected shallow water versus deep water wells, and the projected incidence of spotting and lubrication. These percentages were then applied to current well count data for this final rule. EPA used the Offshore Development Document rates of failure (*i.e.,* exceeding permit toxicity limitations) to project the current number of wells that would require onsite injection or onshore disposal of mineral oil-amended WBF, and their disposal volumes were calculated from per well volume estimates for WBF wells.

The effect of WBF-to-SBF conversion (anticipated under the discharge options) and SBF-to-WBF conversion (anticipated under the zero discharge option) were derived from the estimated duration (in days) of the SBF-drilled interval. The projected number of drilling days was increased by a factor of 2 for each WBF model well to derive the projected number of drilling days that would be required if WBFs were used in place of SBFs. The incremental drilling time was used to estimate compliance costs (*e.g.,* increased rig costs) associated with SBF-to-WBF conversions.

2. Equipment Installation and Downtime

In the April 2000 NODA, EPA estimated that each SBF well incurred cuttings dryer installation and downtime costs. EPA revised the number of SBF wells drilled per cuttings dryer equipment installation per year based on industry-supplied ROC data (*see* Section III.B.1). EPA concluded that operators are drilling multiple wells per year with the same cuttings dryer equipment installation. Consequently, EPA reduced the number of cuttings dryer equipment installations required to drill the annual number of SBF wells. For development wells, the average number of SBF wells drilled per cuttings dryer equipment installation per year is 2.2. For exploration wells, the average number of SBF wells drilled per cuttings dryer equipment installation per year is 1.6. EPA incorporated these factors into the compliance costs estimates and these factors reduced the overall cuttings dryer equipment installation and downtime costs for the industry.

3. Proportion of Hauled Versus Injected Wastes

EPA estimated in the April 2000 NODA that 80% of drilling operations in the GOM, Offshore California, and Cook Inlet, Alaska, haul waste onshore with the remaining 20% re-injecting these wastes onsite. EPA used these proportions to weight the average cost of complying with zero discharge (*i.e.,* BAT/NSPS Option 3). EPA revised these proportions based on additional information received in response to the April 2000 NODA (*see* Section IV.E below) and updated the compliance cost and NWQI models.

4. OBF and WBF Conversion to SBF

EPA revised its compliance cost model to incorporate the effect of operators switching from one type of drilling fluid to another under each of the three SBF-cuttings technology options (*see* Section III.A.4). Generally, as compared with WBF and OBFs, SBFs led to a reduction in days required to drill a model well which leads to a decrease in drilling costs. Additionally, EPA revised the development drilling footage estimate due to additional information on the improved directional drilling capabilities of SBF over WBF.

C. Economic Impacts Analyses

In response to the April 2000 NODA, EPA identified that two projects used for economic modeling have shut in. Consequently, EPA removed these two projects from the economic analysis. A total of 18 projects remain for the economic modeling of existing projects and 13 remain for the economic modeling of new projects.

EPA added an environmental justice (EJ) analysis which investigates the potential for impacts on minorities and socioeconomically disadvantaged groups under the zero discharge option. EPA performed a Tier 1 screening analysis, which combines geographic location and U.S. Census Bureau data to determine the number of persons living within 1 mile and 50 miles of drilling waste handling and disposal sites, their race, and their socioeconomic status. A computer program developed by EPA Region 6 was used to rank and characterize sites on the basis of whether the populations near the site contain higher proportions of minority and socioeconomically disadvantaged persons than the state as a whole. Based on scores derived for the 13 GOM onshore drilling waste handling and disposal sites, EPA identified five facilities that could be potentially associated with disproportionate impacts on minorities or socioeconomically disadvantaged groups. EPA presents the results of the EJ analysis in Section IX.

D. Water Quality Impact and Human Health Analyses

EPA received comments regarding the heavy metal leach factors used in the water quality impact analyses but did not receive any specific data that could be used in the analyses (Docket No. W–98–26, Record No. IV.A.a.2). EPA

therefore did not change these factors. However, EPA reevaluated the modeling used in the proposal that metals for which there were no factors found in the literature were completely insoluble in the receiving water (*i.e.,* the leach factor would be zero). EPA estimated that these heavy metals would not be less soluble than iron which has the lowest leach percentage factor. Thus, the iron leach factor was transferred to the following metals for which a zero leach factor was previously used: aluminum, antimony, beryllium, selenium, silver, thallium, tin, and titanium.

E. Non-Water Quality Environmental Impact Analyses

As mentioned in Section III.E, EPA received additional information regarding waste disposal practices in each of the three geographic areas (*e.g.,* GOM, Offshore California, Cook Inlet, Alaska). As a result of this information, EPA revised the modeling for the fraction of waste either injected at the drill site, injected on-shore or land disposed (*see* SBF Development Document). Though the percentage of waste injected onsite versus hauled to shore (20% vs. 80%) in the GOM remains unchanged, the method of onshore disposal has been revised for the final rule. In the GOM, 80% of the waste hauled to shore is injected onshore and only 20% is landfarmed.

EPA estimates that all SBF wastes from Californian deep water exploratory wells are sent onshore (*i.e.,* 100% onshore disposal vs. 0% on-site injection). For all other wells (*i.e.,* shallow water development and exploratory and deep water development), EPA estimates that most of the offshore waste is disposed through offshore on-site cuttings re-injection (*i.e.,* 20% onshore disposal vs. 80% on-site injection) based on the fact that most of these wells are being drilled from fixed facilities. EPA estimates that most California offshore wastes sent onshore are disposed via onshore formation injection (*i.e.,* 20% of offshore wastes sent onshore disposed via landfarming vs. 80% of offshore wastes sent onshore disposed via onshore injection) based on the number of California land disposal operations.

At proposal, based on the record for the 1996 Coastal rule, EPA determined that onsite injection was not feasible throughout Cook Inlet, Alaska (*see* Coastal Development Document, EPA–821–R–96–023, Section 5.10.3). More recently, however, EPA identified in the April 2000 NODA (65 FR 21558) that the SBF rule record now demonstrates that many Cook Inlet operators in Coastal waters are using cuttings re-injection (*see* Docket No. W–98–26: Record No. III.B.a.11, Record No. III.B.a.23, Record No. III.B.a.53). EPA contacted Cook Inlet operators (*e.g.,* Phillips, Unocal, Marathon Oil) and the State regulatory agency, Alaska Oil and Gas Conservation Commission (AOGCC), for more information on the most recent re-injection practices of Coastal and Offshore Cook Inlet operators (65 FR 21558). AOGCC regulations provide Cook Inlet operators the opportunity to permit and operate Class II disposal wells and annular disposal activities. Information provided to EPA indicate that Cook Inlet operators in Coastal waters are availing themselves of on-site cuttings injection and are receiving AOGCC permits for this activity. Generally, Cook Inlet operators in Coastal waters agree that on-site injection is available for most operations.

AOGCC also agreed that there should be enough formation re-injection disposal capacity for the small number of wells (< 5–10 wells per year) being drilled in Cook Inlet Coastal waters. AOGCC stated, however, that case-specific limitations should be considered when evaluating disposal options. For instance, Unocal has experienced difficulty establishing formation injection in several wells that were initially considered for annular disposal. In addition, Cook Inlet operators have the burden of proving to AOGCC's satisfaction that the waste will be confined to the formation disposal interval. Approval of annular disposal includes a review of cementing and leak-off test records. In some instances the operator may also have to run a cement bond log. When an older well is converted for use as a disposal well, some of this information may not exist. In cases where there is insufficient information, disposal is not allowed. Annular disposal is also limited to the facility on which the waste is generated. Although Class II disposal regulations don't restrict waste transport, it has generally been the practice of the various fields' owners not to accept any waste generated by other operators. In addition, AOGCC stated that a zero discharge requirement poses serious technical hurdles with respect to the handling of drilling waste for exploration drilling with mobile rigs. Normally, there is neither capacity for storage or room for processing equipment on exploratory drilling rigs. Therefore, to be conservative for the NWQI analysis, EPA estimates that all of the cuttings from the Coastal Cook Inlet operations (*i.e.,* shallow water wells) are re-injected (*i.e.,* 0% onshore disposal vs. 100% on-site injection) based on the ability of industry to dispose of oil-based cuttings via on-site formation injection after gaining State regulatory approval.

In order to assess the SBF NWQIs relative to the total impacts from drilling operations, EPA included estimates of the daily drilling rig impacts to the NWQIs from SBF-related activities. The additional impacts consist of fuel use and air emissions resulting from the various drilling rig pumps and motors as well as impacts of a daily helicopter trip for transporting personnel and/or supplies. Impacts were assessed for the number of days that an SBF interval is drilled versus the number of days well intervals are drilled using WBFs and OBFs and for the number of wells drilled using each of the drilling fluids.

F. Numerical Limits for Retention of SBF Base Fluid on SBF-Cuttings

A series of potential numerical limits for retention of SBF base fluid on SBF-cuttings were developed based in part on combinations of data selection criteria suggested in comments on the April 2000 NODA. These data selection criteria include: (1) Existing record of retention calculations (*i.e.,* ''back-up'' retort sheet information for quality assurance/quality control purposes); and (2) foreign or domestic location of well drilling activity (*e.g.,* North Sea, Canada). Numerical limits promulgated in today's final rule were based on data with existing records of retention calculations, and they included data from well drilling activities in foreign countries. The inclusion of data from foreign countries is intended to include data representing drilling with cuttings dryers at a wider range of geological formations than just the ones for which data was received from current operations.

V. Development and Selection of Effluent Limitations Guidelines and Standards

A. Waste Generation and Characterization

Drill cuttings are produced continuously at the bottom of the hole at a rate dependent on a variety of factors including: (1) The advancement of the drill bit; (2) the size and design of drill bit used (*e.g.,* polycrystalline diamond compact (PDC)); and (3) the drilling fluid type used. Drill cuttings are carried to the surface by the drilling fluid, where the cuttings are separated from the drilling fluid by the solids control system. The drilling fluid is then

sent back to the active mud system (*e.g.,* mud pumps, down hole, trip tanks, etc.), provided it still has characteristics to meet technical requirements. Drilling fluids cool and lubricate the drill bit, stabilize the walls of the borehole, transport cuttings, and maintain equilibrium between the borehole and the formation pressures. Various sizes of drill cuttings are separated by the solids separations equipment, and it is necessary to remove the fines (*i.e.,* small sized cuttings or ''low gravity solids'') as well as the large cuttings from the drilling fluid to maintain the required rheological properties.

Increased recovery from the cuttings is more problematic for WBF than for SBF because the WBF water-wets the cuttings which encourages the cuttings to disperse and spoil the drilling fluid properties. Therefore, compared to WBF, more aggressive methods of recovering SBF from the cuttings wastestream are practical.

SBFs, used or unused, are a valuable commodity and not a waste. It is industry practice to continuously reuse the SBF while drilling a well interval, and at the end of the well, to ship the remaining SBF back to shore for refurbishment and reuse. One of the main incentives for operators to attempt to recover as much SBF as possible during drilling is the relatively high unit cost of SBF, approximately $160 to $300 per barrel, as compared to OBFs ($70 to 90 per barrel) and WBFs ($45 per barrel) (Docket No. W–98–26, Record No. IV.B.a.13). Operators involved in the first 1998 GOM field demonstrations of cuttings dryers (*i.e.,* advanced solids control technology) were attempting to obtain further reductions in drilling costs, beyond that obtained by shortening the overall drilling time for the well, by recovering more SBF. SBFs are relatively easy to separate from the drill cuttings because the drill cuttings do not disperse or hydrate in the drilling fluid to the same extent as compared to WBFs. Reducing cuttings hydration is particularly important in certain formations (*e.g.,* shale formations in GOM). With WBF, due to dispersion of the drill cuttings, drilling fluid components often need to be added to maintain the required drilling fluid properties. These additions are often in excess of what the drilling system can accommodate. The excess ''dilution volume'' of WBF is a resultant waste. This dilution volume waste does not occur with SBF. For these reasons, SBF is only discharged as a contaminant of the drill cuttings wastestream. It is not discharged on purpose as neat drilling fluid (*i.e.,* drilling fluid not associated with cuttings).

Current practice is that the top well section is normally drilled with a WBF. As the well becomes deeper, the performance requirements of the drilling fluid increase, and the operator may, at some point, decide that the drilling fluid system should be changed to either a traditional OBF, based on diesel oil or mineral oil, or an SBF. The system, including the drill string and the solids separation equipment, must be changed entirely from the WBF to the SBF (or OBF) system, and the two do not function as a blended system. The entire system is either: (1) A water dispersible (aqueous) drilling fluid such as a WBF; or (2) an oleaginous drilling fluid such as OBFs, enhanced mineral oil based drilling fluids, or SBFs. The decision to change the system from a WBF water dispersible system to an oleaginous drilling fluid depends on many factors including:

I. The operational considerations (*e.g.,* rig type, risk of riser disconnects, rig equipment, and distance from support facilities);

II. The relative drilling performance of one type fluid compared to another (*e.g.,* rate of penetration, well angle, hole size/casing program options, compatible drilling bit, and horizontal deviation);

III. The presence of geologic conditions that favor a particular fluid type or performance characteristic (*e.g.,* formation stability/sensitivity, formation pore pressure vs. fracture gradient, and potential for gas hydrate formation);

IV. Drilling fluid cost (*i.e.,* base cost plus daily operating cost);

V. drilling operation cost (*i.e.,* rig cost plus logistic and operation support); and

VI. Drilling waste disposal cost.

Industry has commented that while the right combination of factors that favor the use of SBF can occur in any area, they most frequently occur with ''deep water'' operations (*i.e.,* greater than or equal to 1,000 feet of water). This is due to the fact that these operations are higher cost and can therefore better justify the higher initial cost of SBF use. Industry has also commented that SBF may be increasingly used in shallow water wells due to the ability of SBF to increase average rates of penetration and shorten average times to complete drilling operations (Docket No. W–98–26, Record No. IV.A.a.3).

The volume of cuttings generated while drilling the SBF or OBF intervals of a well depends on the type of well (development or production) and the water depth (shallow or deep). EPA developed OBF and SBF model well characteristics from information provided by the American Petroleum Institute (API). API provided well size date for four types of wells currently drilling the GOM: development and exploratory wells in both deep water (*i.e.,* greater than or equal to 1,000 feet of water) and shallow water (*i.e.,* less than 1,000 feet of water). These model wells are referred to as: (1) Shallow-water development (SWD); (2) shallow-water exploratory (SWE); (3) deep-water development (DWD); and (4) deep-water exploratory (DWE). For the four model wells, EPA determined that the volumes of cuttings generated by these SBF or OBF well intervals are (in barrels): 565 for SWD; 1,184 for SWE; 855 for DWD; and 1,901 for DWE. These volumes represent only the rock, sand, and other formation solids drilled from the hole, and do not include drilling fluid that adheres to these formation cuttings. These values also include the additional formation cuttings volume of 7.5% washout. Washout is caving in or sloughing off of the well bore. Washout, therefore, increases hole volume and increases the amount of cuttings generated when drilling a well. The washout percentage EPA used in its analyses (*i.e.,* 7.5%) is based on the rule of thumb reported by industry representatives of 5 to 10% washout when drilling with SBF or OBF.

Drilling fluid returning from the well is laden with drill cuttings. The drill cuttings range in size from large particles which are on the order of a centimeter or more in size to small particles (*i.e.,* fines or ''low gravity solids'') which are fractions of a millimeter in size. Standard or current practice solids control systems employ primary and secondary shale shakers in series with a ''fines removal unit'' (*e.g.,* decanting centrifuge or mud cleaner). The drilling fluid and drill cuttings from the well are first passed through primary shale shakers. These shakers remove the largest cuttings which are approximately 1 to 5 millimeters in size. The drilling fluid recovered from the primary shakers is then passed over secondary shale shakers to remove smaller drill cuttings. Finally, a portion or all of the drilling fluid recovered from the primary and secondary shakers may be passed through the fines removal unit to remove fines from the drilling fluid. It is important to remove fines from the drilling fluid in order to maintain the desired rheological properties of the active drilling fluid system (*e.g.,* viscosity, density). Thus, the cuttings wastestream normally consists of discharged cuttings from the primary and secondary shale shakers and fines from the fines removal unit.

Operators using improved solids control technology process the cuttings discarded from the primary and secondary shale shakers through a ''cuttings dryer'' (*e.g.,* vertical or horizontal centrifuge, squeeze press mud recovery unit, High-G linear shaker). The cuttings from the cuttings dryer are discharged and the recovered SBF is sent to the fines removal unit. The advantage of the cuttings dryer is that more SBF is recovered for re-use and less SBF is discharged into the ocean. This, consequently, will reduce the pollutant loadings to the ocean and the potential of the waste to cause anoxia (lack of oxygen) in the receiving sediment.

As discussed in the April 2000 NODA (65 FR 21569), solids control equipment generally breaks larger particles into smaller particles. An undesirable increase in drilling fluid weight and viscosity can occur when drill solids degrade into fines and ultra-fines. Ultra-fines are generally classified as being less than 5 microns (10^{-6} meters) in length and solids control equipment generally cannot remove these ultra-fines. An unacceptable high fines content (*i.e.,* generally > 5% of total drilling fluid weight) may consequently lead to drilling problems (*e.g.,* undesirable rheological properties, stuck pipe). Therefore, it is possible that the increased recovery of SBF from cuttings for re-use in the active mud system, often achieved through use of the cuttings dryer in solids control systems, may lead to a build-up in fines for certain formation characteristics (*e.g.,* high reactivity of formation cuttings, limited loss of drilling fluid into the formation). In the April 2000 NODA, EPA solicited comments regarding whether EPA's proposed numeric cuttings retention value might cause operators (where there are unfavorable formation characteristics) to: (1) Dilute the fines in the active mud system through the addition of ''fresh'' SBF; and/or (2) capture a portion of the fines in a container and send the fines to shore for disposal.

Comments from API/NOIA identified only one instance in which the use of a cuttings dryer in combination with a fines removal unit in the United States may have lead to an increase in ''fines build-up'' and a loss of circulation event (Docket No. W–98–26, Record No. IV.A.a.13). Further communication with additional industry stakeholders identified that this well (Shell, Green Canyon 69, OCS–G–13159#3) was the first application of the cuttings dryer type (horizontal centrifuge cuttings dryer) in the GOM and inexperience with this type of technology may have contributed to the build-up of fines causing well problems. However, other commentors stated that fines build-up was not an issue for the well in question (Docket No. W–98–26, Record No. IV.A.b.1). Moreover, further industry comments revealed that the properties of formations are often the main culprit of loss circulation and that the same rig (Marianas) had a loss of circulation at another nearby well in the same formation when a cuttings dryer was not being used (Docket No. W–98–26, Record No. IV.A.b.1). Therefore, based on the record, which includes over three dozen successful cuttings dryer deployments, EPA concludes that fines build up is not an issue of concern when operators properly operate and maintain cuttings dryers and fines removal equipment.

Drill cuttings are typically discharged continuously as they are separated from the drilling fluid in the solids separation equipment. The drill cuttings will also carry a residual amount of adhered drilling fluid. Therefore, the two parameters that make up the bulk of the pollutant loadings are TSS and what is measured by the API Retort Method (Appendix 7) as Total Oil. TSS is comprised of two components: the drill cuttings themselves and the solids in the adhered drilling fluid. The drill cuttings are primarily small bits of stone, clay, shale, and sand. The source of the solids in the drilling fluid is primarily the barite weighting agent, and clays (*e.g.,* amine clays) which are added for filtration control and to modify the rheological properties. Benthic smothering and/or sediment grain size alteration resulting in potential damage to invertebrate populations and alterations in benthic community structure is a concern with uncontrolled SBF drilling discharges due to the quantity and characteristics of associated TSS discharges. In general, large cuttings particles with a high percentage of adhering SBF (*e.g.,* >12% (wt. SBF)/(wt. wet cuttings)) tend to conglomerate and quickly settle out to the benthic environment quickly near the well site.

Additionally, environmental impacts can be caused by toxic, conventional, and non-conventional pollutants adhering to the solids. The adhered SBF drilling fluid is mainly composed, on a volumetric basis, of the synthetic material (*i.e.,* ''base fluid''). Formation oil can also contaminate SBF-cuttings and contribute priority, conventional, and non-conventional pollutants. The oleaginous material (*i.e.,* SBF base fluid and formation oil) may be toxic and it may contain priority pollutants such as polynuclear aromatic hydrocarbons (PAHs). Depending on bottom currents, temperature, and rate of biodegradation this oleaginous material may cause hypoxia (*i.e.,* reduction in dissolved oxygen concentrations) or anoxia (*i.e.,* absence of dissolved oxygen) in the immediate sediment. Oleaginous materials which biodegrade quickly will reduce dissolved oxygen concentrations more rapidly than more slowly degrading oleaginous materials. EPA, however, thinks that fast biodegradation is environmentally preferable to slower biodegradation despite the increased risk of temporary hypoxia which accompanies fast biodegradation. EPA's position is supported by published seabed surveys which show that benthic re-colonization by infaunal individuals after the discharge of SBF-cuttings or OBF-cuttings can be correlated with the disappearance of the base fluid in the sediment. Large persistent cuttings piles may provide a source of environmental contamination for many years (Docket No. W–98–26, Record No. IV.F.2). Moreover, benthic re-colonization rates do not seem to be correlated with the severity of any hypoxic or anoxic effects that may result while the SBF base fluid is degrading or dispersing. Numerous studies show that SBF base fluids that biodegrade faster lead to a more rapid recovery of the pre-discharge benthic community.

As a component of the drilling fluid, the barite weighting agent is also discharged as a contaminant of the drill cuttings. Barite is a mineral principally composed of barium sulfate ($BaSO_4$), and it is known to generally have trace contaminants of several toxic heavy metals such as mercury, cadmium, arsenic, chromium, copper, lead, nickel, and zinc. SBF also contain non-conventional pollutants found in other drilling fluid components (*e.g.,* emulsifiers, oil wetting agents, filtration control agents, and viscosifiers).

As previously stated in the April 2000 NODA (65 FR 21560), EPA learned that SBF is controlled with zero discharge practices at the drill floor, in the form of vacuums and sumps to retrieve spilled fluid. EPA also learned that approximately 75 barrels of fine solids and barite, which have an approximate SBF content of 25%, can accumulate in the dead spaces of the mud pit, sand trap, and other equipment in the drilling fluid circulation system. Current practice is to either wash these solids out with water for overboard discharge, or to retain the waste solids for disposal. Several hundred barrels (approximately 200 to 400 barrels) of water are used to wash out the mud pits. Industry representatives also indicated to EPA that those oil and gas extraction

operations that discharge wash water and accumulated solids first recover free SBF.

B. Selection of Pollutant Parameters

1. Stock Limitations and Standards for Base Fluids

a. *General.* In the final rule, where SBF-cuttings may be discharged, except for Cook Inlet, Alaska, EPA is establishing BAT limitations and NSPS that require the synthetic materials which form the base fluid of the SBFs to meet limitations and standards on PAH content, sediment toxicity, and biodegradation. If these stock limitations are not met the technology basis for meeting these limitations and standards is: (1) Product substitution; or (2) zero discharge based on land disposal or cuttings re-injection. The regulated toxic, conventional, and non-conventional pollutant parameters are identified below. A large range of synthetic, oleaginous, and water miscible materials are available for use as base fluids. These stock limitations on the base fluid are intended to encourage product substitution reflecting best available technology and best available demonstrated technology wherein only those synthetic materials and other base fluids which minimize potential loadings and toxicity may be discharged. Additionally, EPA is retaining BPT and BCT requirements for SBFs and SBF-cuttings as no discharge of free oil as determined by the static sheen text (Appendix 1 of subpart A of 40 CFR Part 435).

As stated below in Section V.F, EPA is today promulgating BPT, BCT, BAT, and NSPS for SBFs and SBF-cuttings for Coastal Cook Inlet, Alaska as zero discharge except when Coastal Cook Inlet, Alaska, operators are unable to dispose of their SBF-cuttings using any of the following disposal options: (1) On-site re-injection (annular disposal or Class II UIC); (2) re-injection using a nearby Coastal or Offshore Class II UIC disposal well; or (3) onshore disposal using a nearby Class II UIC disposal well or land application. If an operator is able to make these showings, then the operator would be subject to the same requirements for SBF-cuttings that apply elsewhere. The regulated toxic, conventional, and non-conventional pollutant parameters are identified below.

b. *PAH Content.* EPA is regulating the PAH content of base fluids because PAHs are comprised of toxic priority pollutants. SBF base fluids typically do not contain PAHs, whereas the traditional OBF base fluids of diesel and mineral oil typically contain 5 to 10% PAH and 0.35% PAH respectively. The PAHs typically found in diesel and mineral oil include: (1) the toxic priority pollutants fluorene, naphthalene, phenanthrene, and others; and (2) non-conventional pollutants such as alkylated benzenes and biphenyls. Therefore, the PAH BAT limitation and NSPS are components of this final regulation to help discriminate between acceptable and non-acceptable base fluids.

c. *Sediment Toxicity.* EPA is also regulating the sediment toxicity in base fluids as a non-conventional pollutant parameter and as an indicator for toxic pollutants and non-conventional pollutants in base fluids (*e.g.,* enhanced mineral oils, internal olefins, linear alpha olefins, poly alpha olefins, paraffinic oils, C_{12}–C_{14} vegetable esters of 2-hexanol and palm kernel oil, ''low viscosity'' C_8 esters, and other oleaginous materials). It has been shown, during EPA's development of the Offshore Guidelines, that establishing limits on toxicity encourages the use of less toxic drilling fluids and additives. Many of the SBF base fluids have been shown to have lower toxicity than OBF base fluids, but among SBFs some are more toxic than others. Today's final discharge option (*i.e.,* BAT/NSPS Option 2) includes a base fluid sediment toxicity stock limitation, as measured by the 10-day sediment toxicity test (ASTM E1367–92) using a natural sediment or formulated sediment and *Leptocheirus plumulosus* as the test organism.

d. *Biodegradation.* EPA is also regulating the biodegradation in base fluids as an indicator of the extent, in level and duration, of the toxic effect of toxic pollutants and non-conventional pollutants present in the base fluids (*e.g.,* enhanced mineral oils, internal olefins, linear alpha olefins, poly alpha olefins, paraffinic oils, C_{12}–C_{14} vegetable esters of 2-hexanol and palm kernel oil, ''low viscosity'' C_8 esters, and other oleaginous materials). Based on results from seabed surveys at sites where various base fluids have been discharged with drill cuttings, EPA believes that the results from the three biodegradation tests used during the rulemaking (*i.e.,* solid phase test, anaerobic closed bottle biodegradation test, respirometry biodegradation test) are indicative of the relative rates of biodegradation in the marine environment. In addition, EPA thinks the biodegradation parameter correlates strongly with the rate of recovery of the seabed where OBF- and SBF-cuttings have been discharged. The various base fluids vary widely in biodegradation rates, as measured by the three biodegradation methods. However, the relative ranking of the base fluids remain relatively similar across all three biodegradation tests.

As originally proposed in February 1999 (64 FR 5504) and re-stated in the April 2000 NODA (65 FR 21550), EPA is today promulgating a BAT limitation and NSPS to control the minimum amount of biodegradation of base fluid. Today's final discharge option (*i.e.,* BAT/NSPS Option 2) includes a base fluid biodegradation stock limitation, as measured by the marine anaerobic closed bottle biodegradation test (*i.e.,* ISO 11734).

e. *Bioaccumulation.* EPA also considered establishing a BAT limitation and NSPS that would limit the base fluid bioaccumulation potential. The regulated parameters would be the non-conventional and toxic priority pollutants that bioaccumulate. EPA reviewed the current literature to identify the bioaccumulation potential of various base fluids. EPA determined that SBFs are not expected to significantly bioaccumulate because of their extremely low water solubility and consequent low bioavailability. Their propensity to biodegrade makes them further unlikely to significantly bioaccumulate in marine organisms.

EPA identified that hydrophobic chemicals (*e.g.,* ester base fluids) that have a log K_{ow} less than about 3 to 3.5 may bioaccumulate rapidly but not to high concentrations in tissues of marine organisms, particularly if they are readily biodegradable into non-toxic metabolites (Docket No. W–98–26, Record No. IV.F.1). (**Note:** The octanol/water partition coefficient (K_{ow}) is used as a surrogate for estimating lipid/water partitioning). Moreover, hydrophobic chemicals (*e.g.,* C_{16}–C_{18} internal olefins, various poly alpha olefins, and C_{18} n-paraffins) with a log K_{ow} greater than about 6.5 to 7 do not bioaccumulate effectively from the water, because their solubility in both the water and lipid phases is very low (Docket No. W–98–26, Record No. IV.F.1). Finally, the degradation by-products of SBF base fluids (*e.g.,* alcohols) are likely to be more polar (*i.e.,* more miscible with water) than the parent substances. The higher water solubility will result in these degradation by-products partitioning into the water column and being diluted to toxicologically insignificant concentrations.

2. Discharge Limitations

a. *Free Oil.* Under BPT and BCT limitations for SBF-cuttings, EPA retains the prohibition on the discharge of free oil as determined by the static sheen test

(see Appendix 1 of subpart A of 40 CFR part 435). Under this prohibition, drill cuttings may not be discharged when the associated drilling fluid would fail the static sheen test. The prohibition on the discharge of free oil is intended to minimize the formation of sheens on the surface of the receiving water. The regulated parameter of the no free oil limitation would be the conventional pollutant oil and grease which separates from the SBF and causes a sheen on the surface of the receiving water.

The free oil discharge prohibition does not control the discharge of oil and grease and crude oil contamination in SBFs as it would in WBFs. With WBFs, oils which may be present (*e.g.,* diesel oil, mineral oil, formation oil, or other oleaginous materials) are present as the discontinuous phase. As such these oils are free to rise to the surface of the receiving water where they may appear as a film or sheen upon or discoloration of the surface. By contrast, the oleaginous matrices of SBFs do not disperse in water. In addition they are weighted with barite, which causes them to sink as a mass without releasing either the oleaginous materials which comprise the SBF or any contaminant formation oil. Thus, the test would not identify these pollutants. However, a portion of the SBF may rise to the surface to cause a sheen. The components that rise to the surface fall under the general category of oil and grease and are considered conventional pollutants. Therefore, the purpose of the no free oil limitation of today's final regulation is to control the discharge of conventional pollutants which separate from the SBF and cause a sheen on the surface of the receiving water. The limitation is not intended to control formation oil contamination nor the total quantity of conventional pollutants discharged.

b. *Formation Oil Contamination.* As originally proposed in February 1999 (64 FR 5505) and re-stated in the April 2000 NODA (65 FR 21552), EPA is today promulgating a BAT limitation and NSPS of zero discharge to control formation oil contamination on SBF-cuttings. EPA is also today promulgating a screening method (Reverse Phase Extraction (RPE) method presented in Appendix 6 to subpart A of part 435) and a compliance assurance method (Gas Chromatograph/Mass Spectrometer (GC/MS) method presented in Appendix 5 to subpart A of part 435).

Formation oil is an ''indicator'' pollutant for the many toxic and priority pollutant pollutants present in formation (crude) oil (*e.g.,* aromatic and polynuclear aromatic hydrocarbons). These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. EPA is requiring that formation oil contamination be measured at two points. First, EPA is requiring that operators verify and document that a SBF is free of formation oil contamination before initial use of the SBF through use of the GC/MS compliance assurance method (Appendix 5 to subpart A of 40 CFR part 435). Second, EPA is requiring that operators use the RPE method (Appendix 6 to subpart A of 40 CFR part 435) for the SBF recovered by the solids control equipment to detect formation oil contamination. The RPE method is a fluorescence test and is appropriately ''weighted'' to better detect crude oils. These crude oils contain more toxic aromatic and PAH pollutants and show brighter fluorescence (*i.e.,* noncompliance) in the RPE method at lower levels of crude oil contamination. Since the RPE method is a relative brightness test, operators may also use the GC/MS compliance assurance method when the results from the RPE method are in doubt by either the operator or the enforcement authority. Results from the GC/MS compliance assurance method will supersede those of the RPE method.

c. *Retention of Drilling Fluid on Cuttings.* EPA is today promulgating a BAT limitation and NSPS to control the retention of drilling fluid on drill cuttings. The BAT limitation and NSPS are presented as the percentage of base fluid on wet cuttings (*i.e.,* mass base fluid (g)/mass wet cuttings (g)), averaged over the entire well sections drilled with SBF. The limitation and standard controls the quantity of drilling fluid discharged with the drill cuttings. Both toxic pollutants and non-conventional pollutants would be controlled by this limitation. Several pollutants are present in the barite weighting agent, including the toxic metal pollutants arsenic, chromium, copper, lead, mercury, nickel, and zinc, and the non-conventional metal pollutants aluminum and tin. A complete SBF formulation also includes non-conventional pollutants found in the SBF base fluids (*e.g.,* enhanced mineral oils, internal olefins, linear alpha olefins, poly alpha olefins, paraffinic oils, C_{12}–C_{14} vegetable esters of 2-hexanol and palm kernel oil, ''low viscosity'' C_8 esters, and other oleaginous materials) and in other drilling fluid components (*e.g.,* emulsifiers, oil wetting agents, filtration control agents, and viscosifiers). These pollutants would not be controlled by the sediment toxicity stock limitations. In response to the February 1999 proposal (64 FR 5501), EPA received comments that these non-conventional pollutants include fatty acids (Docket No. W–98–26, Record No. III.A.a.7). EPA also received further information that the non-conventional pollutants in these drilling fluid components include amine clays, amine lignites, and dimer/trimer fatty acids (Docket No. W–98–26, Record No. III.B.b.1).

This limitation would also control the toxic effect of the drilling fluid and the persistence or biodegradation of the base fluid. Specifically, as stated in the April 2000 NODA (65 FR 21553), lowering the percentage of residual drilling fluid retained on cuttings increases the recovery rate of the seabed receiving the cuttings (Docket No. W–98–26, Record No. I.D.b.30 and 31; Record No. III.B.a.15). Limiting the amount of SBF content in discharged cuttings controls: (1) The amount of toxic and non-conventional pollutants in SBF which are discharged to the ocean; (2) the biodegradation rate of discharged SBF; and (3) the potential for SBF-cuttings to develop cuttings piles and mats which are deleterious to the benthic environment.

As originally proposed in February 1999 (64 FR 5547) and re-stated in the April 2000 NODA (65 FR 21552), EPA is today promulgating a retort and sampling compliance method for the cuttings retention BAT limitation and NSPS (*see* Appendix 7 to subpart A of 40 CFR part 435; API Recommended Practice 13B–2).

d. *Sediment Toxicity.* EPA is also regulating the sediment toxicity in SBF discharged with cuttings as a non-conventional pollutant parameter and as an indicator for toxic pollutants in SBFs. As originally proposed in February 1999 (64 FR 5491) and re-stated in April 2000 (65 FR 21557), EPA is today promulgating a BAT limitation and NSPS to control the maximum sediment toxicity of the SBF discharged with cuttings at the point of discharge. The sediment toxicity of the SBF-cuttings at the point of discharge is measured by the modified sediment toxicity test (ASTM E1367–92) using a natural sediment or formulated sediment and *Leptocheirus plumulosus* as the test organism.

EPA finds that the sediment toxicity test at the point of discharge is practical as an indicator of the sediment toxicity of the drilling fluid at the point of discharge. The sediment toxicity test applied at the point of discharge will control non-conventional pollutants found in some drilling fluid components (*e.g.,* emulsifiers, oil wetting agents, filtration control agents,

and viscosifiers) which are added to the base fluid in order to build a complete SBF package. Other possible toxic pollutants in drilling fluids may include mercury, cadmium, arsenic, chromium, copper, lead, nickel, and zinc, and formation oil contaminants. As previously stated, establishing discharge limits on toxicity encourages the use of less toxic drilling fluids and additives. The modifications to the 10-day sediment toxicity test include shortening the test to 96-hours. Shortening the test will allow operators to continue drilling operations while the sediment toxicity test is being conducted on the discharged drilling fluid. Moreover, discriminatory power is substantially reduced for the 10-day test on drilling fluid as compared to the 96-hour test (*i.e.,* the 10-day test is of lower practical use in determining whether a SBF is substantially different from OBFs). Finally, operators discharging WBFs are already complying with a biological test at the point of discharge, the 96-hour SPP toxicity test, which tests whole WBF aquatic toxicity using the test organism *Mysidopsis bahia*.

3. Maintenance of Current Requirements

Today's rule does not modify the existing BAT and NSPS limitations on the stock barite of 1 mg/kg mercury and 3 mg/kg cadmium. These limitations control the levels of toxic pollutant metals because cleaner barite that meets the mercury and cadmium limits is also likely to have reduced concentrations of other metals. Evaluation of the relationship between cadmium and mercury and the trace metals in barite shows a correlation between the concentration of mercury with the concentration of arsenic, chromium, copper, lead, molybdenum, sodium, tin, titanium and zinc (*see* Section VI, Offshore Development Document, EPA–821–R–93–003).

Today's rule does not modify the existing BAT and NSPS limitations prohibiting the discharge of drilling wastes containing diesel oil in any amount. Diesel oil is considered an ''indicator'' for the control of specific toxic pollutants. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. Diesel oil may contain from 3 to 10% by volume PAHs, which constitute the more toxic pollutants in petroleum products.

Today's rule does not modify the existing BAT limitation and NSPS for controlling the maximum aqueous phase toxicity of SBF-cuttings at point of discharge using the suspended particulate phase (SPP) test (*see* Appendix 2 of subpart A of Part 435). The BAT limitation and NSPS for controlling aqueous toxicity of discharged SBF-cuttings is retained as the minimum 96-hour LC_{50} of the SPP shall be 3% by volume. EPA is interested in controlling the toxicity of drilling fluids in the sediment and the water column and is requiring both a sediment toxicity test and an aqueous phase toxicity test to assess overall toxicity of the drilling fluid at the point of discharge. EPA finds that the SPP test at the point of discharge is practical as a measurement of the aquatic toxicity of the drilling fluid at the point of discharge. The discharge SPP test will control non-conventional pollutants found in drilling fluid components (*e.g.,* emulsifiers, oil wetting agents, filtration control agents, and viscosifiers) which are added to the base fluid in order to build a complete SBF package. Moreover, operators discharging WBFs are already complying with the SPP toxicity test on discharged WBFs.

C. Regulatory Options Considered and Selected for Drilling Fluid Not Associated With Drill Cuttings

In the February 1999 proposal, EPA proposed BPT, BCT, BAT, and NSPS as zero discharge for SBFs not associated with drill cuttings. In the April 2000 NODA, EPA published two options for the final rule for the BAT limitation and NSPS for controlling SBFs not associated with SBF drill cuttings: (1) Zero discharge; or (2) allowing operators to choose either zero discharge or an alternative set of BMPs with an accompanying compliance method. Industry supported the second option stating that the first option (zero discharge) would result in the costly and potentially dangerous collection, shipping, and disposal of large quantities of rig site wash water containing only a small quantity of SBF (Docket No. W–98–26, Record No. IV.A.a.13). Industry also stated that BMPs would be extremely effective at reducing the quantity of non-cuttings related SBF and would focus operators' attention on reducing these discharges.

EPA is today promulgating BPT, BCT, BAT, and NSPS of zero discharge for SBFs not associated with drill cuttings. This wastestream consists of neat SBFs that are intended for use in the downhole drilling operations (*e.g.,* drill bit lubrication and cooling, hole stability). This wastestream is transferred from supply boats to the drilling rig and can be released during these transfer operations. This wastestream is often spilled on the drill deck but contained through grated troughs, vacuums, or squeegee systems. This wastestream is also held in numerous tanks during all phases of the drilling operation (*e.g.,* trip tanks, storage tanks). EPA received information that rare occurrences of improper SBF transfer procedures (*e.g.,* no bunkering procedures in place for rig loading manifolds) and improper operation of active mud system equipment (*e.g.,* no lock-out, tag-out procedures in place for mud pit dump valves) has the potential for the discharge of tens to hundreds of barrels of neat SBF, or SBF not associated with cuttings, if containment is not practiced (Docket No. W–98–26, Record No. IV.A.a.26, QTECH LTD Reports for Ocean America and Discoverer 534).

Current practice for control of SBF not associated with drill cuttings is zero discharge (*e.g.,* drill deck containment, bunkering procedures), primarily due to the value of SBFs recovered and reused. Therefore, zero discharge for SBF not associated with drill cuttings is technologically available and economically achievable. Moreover, these controls generally allow the re-use of SBF in the drilling operation and has no unacceptable NWQIs.

EPA has also decided that solids accumulated at the end of the well (''accumulated solids'') and wash water used to clean out accumulated solids or on the drill floor are associated with drill cuttings and are therefore not controlled by the zero discharge requirement for SBFs not associated with drill cuttings (*see* Section V.F.2.b).

D. BPT Technology Options Considered and Selected for Drilling Fluid Associated With Drill Cuttings

EPA is today promulgating BPT effluent limitations for the cuttings contaminated with SBFs (''SBF-cuttings''). The BPT effluent limitations promulgated today for SBF-cuttings would control free oil as a conventional pollutant. The BPT limitation is no free oil as measured by the static sheen test, performed on SBF separated from the cuttings in U.S. Offshore waters and Coastal Cook Inlet, Alaska.

In setting the no free oil limitation in U.S. Offshore waters and Coastal Cook Inlet, Alaska, EPA considered the sheen characteristics of currently available SBFs. Since this requirement is currently met by dischargers in the GOM, EPA anticipates no additional costs to the industry to comply with this limitation. Therefore, EPA believes that this limitation represents the appropriate level of control for SBFs associated with drill cuttings.

E. BCT Technology Options Considered and Selected for Drilling Fluid Associated With Drill Cuttings

In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two part cost test: (1) A POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars). In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29%).

The BCT effluent limitations promulgated today would control free oil as a conventional pollutant. EPA is today promulgating a BCT effluent limitation for SBF-cuttings of no free oil equivalent to the BPT limitation for SBF-cuttings of no free oil as determined by the static sheen test in U.S. Offshore waters and Coastal Cook Inlet, Alaska.

In developing BCT limits for the U.S. Offshore waters and Coastal Cook Inlet, Alaska, EPA considered whether there are technologies (including drilling fluid formulations) that achieve greater removals of conventional pollutants than promulgated for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. EPA identified no technologies that can achieve greater removals of conventional pollutants as compared with the U.S. Offshore waters and Coastal Cook Inlet BPT requirements that are also cost-reasonable under the BCT Cost Test. Accordingly EPA is today promulgating BCT effluent limitations for SBF-cuttings equal to the promulgated BPT effluent limitations for SBF-cuttings in U.S. Offshore waters and Coastal Cook Inlet, Alaska.

F. BAT Technology Options Considered and Selected for Drilling Fluid Associated With Drill Cuttings

EPA is promulgating stock limitations and discharge limitations in a two part approach to control SBF-cuttings discharges under BAT. The first part is based on product substitution through use of stock limitations (*e.g.,* sediment toxicity, biodegradation, PAH content, metals content) and discharge limitations (*e.g.,* diesel oil prohibition, formation oil prohibition, sediment toxicity, aqueous toxicity). The second part is the control of the quantity of SBF discharged with SBF-cuttings. As previously stated in the April 2000 NODA, EPA finds that the second part is particularly important because limiting the amount of SBF content in discharged cuttings controls: (1) The amount of SBF discharged to the ocean; (2) the biodegradation rate of discharged SBF; and (3) the potential for SBF-cuttings to develop cuttings piles and mats which are detrimental to the benthic environment.

EPA is also today retaining the existing BAT limitations on: (1) The stock barite of 1 mg/kg mercury and 3 mg/kg cadmium; (2) the maximum aqueous toxicity of discharged SBF-cuttings as the minimum 96-hour LC_{50} of the Suspended Particulate Phase toxicity test (SPP) shall be 3% by volume; and (3) prohibiting the discharge of drilling wastes containing diesel oil in any amount. These limitations control the levels of toxic metal and aromatic pollutants respectively. EPA at this time thinks that all of these components are essential for appropriate control of SBF-cuttings discharges.

The BAT effluent limitations promulgated today for SBF-cuttings would control a variety of toxic and non-conventional pollutants in the stock base fluids by controlling their PAH content, sediment toxicity, and biodegradation. The BAT effluent limitations promulgated today for SBF-cuttings would also control a variety of toxic and non-conventional pollutants at the point of discharge by controlling formation oil contamination, sediment toxicity, and the quantity of SBF discharged. The BAT stock and discharge limitations are described below.

The BAT level of control in the U.S. Offshore waters has been developed taking into consideration among other things: (1) The availability, cost, and environmental performance of SBF base fluids in terms of PAH content, sediment toxicity, and biodegradation rate; (2) the availability, cost, and environmental performance of SBFs retained on the cuttings discharge in terms of sediment toxicity and biodegradation rate; (3) the frequency of formation oil contamination at the various control levels for the discharges; (4) the availability, cost, and environmental performance of equipment and methods to recover SBF from the drill cuttings being discharged; and (5) the NWQIs of each option. By environmental performance, EPA means both a reduction in the quantity of pollutants discharged to the ocean and a reduction in their environmental effects in terms of sediment toxicity, aquatic toxicity, and biodegradation rate. Issues related to the technical availability and economic achievability of today's promulgated BAT limitations are discussed below by regulated parameter. The NWQIs of each selected option is discussed in Section VIII below. EPA also considered NWQIs in selecting the controlled discharge option for SBF-cuttings (*i.e.,* BAT/NSPS Option 2) (*see* Section VIII).

EPA and industry sediment toxicity and biodegradation laboratory studies show that both vegetable esters and low viscosity esters have better environmental performance than all other SBF base fluids. EPA, however, rejected the option of basing BAT sediment toxicity and biodegradation stock limitations and NSPS solely on vegetable esters and low viscosity esters because the record does not indicate that these fluids can be used in drilling situations throughout the offshore subcategory nor could EPA predict the conditions and circumstances where these fluids would be able to be used (*see* Section V.F.1.a). EPA is sufficiently satisfied, however, that both esters provide better environmental performance (*e.g.,* sediment toxicity, biodegradation). Consequently, EPA is promulgating an alternative higher retention on cuttings (ROC) BAT discharge limitation to encourage the use of esters. The higher ROC discharge limitation for SBFs complying with the stock limitations based on esters is derived from data representing four cuttings dryer technologies (*e.g.,* vertical centrifuge, horizontal centrifuge, squeeze press mud recovery unit, and High-G linear shaker). The lower ROC BAT discharge limitation for the SBFs complying with the C_{16}–C_{18} internal olefin stock limitations is based on data from the two top performing cuttings dryer technologies (*e.g.,* vertical centrifuge and horizontal centrifuge). EPA data demonstrates that operators properly using these cuttings dryer technologies (*e.g.,* vertical centrifuge, horizontal centrifuge, squeeze press, High-G linear shaker) will be able to comply with the final higher ROC numerical limitation for ester-based SBFs. EPA believes that this balancing of the importance of retention values with environmental performance as reflected by sediment toxicity and biodegradation rates is justified because of the greater ability of esters to

biodegrade and of their lower sediment toxicity.

Therefore, EPA balanced the environmental performance of the base fluid (in terms of sediment toxicity and biodegradation) with the environmental performance of cuttings associated with drilling fluids (in terms of the retention on cuttings limit) to determine the appropriate best available technology. EPA determined that the improved toxicity and biodegradation of the ester based fluids justified increased flexibility in the ROC limitation as long as the limitation reflected the use of cuttings dryers technologies.

EPA, however, did not base the higher ROC BAT discharge limitation for esters on current shale shaker technology because this does not represent the best available technology (or best available demonstrated technology). EPA does not believe that the improved environmental performance of esters justifies the huge difference in pollutant loadings between existing shale shaker technology and newer cuttings dryer technology. Because the effluent limitations and standards promulgated in this rule account for variability, the effluent limitation and standards are higher than the long term average upon which the technology is based. Here, the LTA for the esters ROC limitation of 9.4% is 4.8%; while the LTA for the IOs ROC limitation of 6.9% is 3.82%. By contrast, the LTA for existing shale shaker technology is 10.2%. This difference translates to 118 million pounds per year of pollutants being discharged using the existing and new model well counts for the selected BAT option (*i.e.,* BAT/NSPS Option 2) (*see* SBF Development Document). Further, as previously stated in the April 2000 NODA (65 FR 21553), field results show that: (1) Cuttings are dispersed during transit to the seabed and no cuttings piles are formed when SBF concentrations on cuttings are held below 5%; and (2) cuttings discharged from cuttings dryers (with SBF retention values under 5%) in combination with a sea water flush, hydrate very quickly and disperse like water-based cuttings. Thus, while EPA is willing to provide additional flexibility to dischargers of ester-based fluids, EPA believes that the appropriate technology basis that reflects BAT is cuttings dryers technology.

EPA determined that zero discharge for BAT was technically feasible and economically achievable because prior to the use of SBFs, the industry was able to operate using only the traditional OBFs (based on diesel oil and mineral oil), which are prohibited from discharge. EPA concluded that a zero discharge BAT limitation for SBF-cuttings would decrease the use of SBFs in favor of OBFs and WBFs. This is because a zero discharge BAT limitation for SBF-cuttings would create an incentive for operators to use the least expensive drilling fluids (*i.e.,* OBFs, WBFs) in order to minimize overall compliance costs.

EPA rejected the BAT zero discharge option for SBF-cuttings wastes because it would result in unacceptable increases in NWQIs. Therefore, EPA rejected the zero discharge option for SBF-cuttings wastes in U.S. waters in the Offshore subcategory of 40 CFR part 435 (''U.S. Offshore waters''). As previously stated in Section II.B, use of OBFs in place of SBFs would lead to an increase in NWQIs including the toxicity of the drilling waste. Use of WBFs in place of SBFs would generally lead to a per well increase in pollutants discharged, an increase in NWQIs, and an increase in aquatic toxicity. WBF drilling operations lead to per well increases in pollutants discharged because WBFs generate six times more washout (*e.g.,* sloughing) of the well wall than SBFs. Also, WBF drilling operations lead to increases in NWQIs because WBF drilling operations generally take longer than SBF drilling operations which lead to more air emissions and fuel usage from drilling rigs and equipment. Aquatic toxicity generally increases when drilling fluid manufacturers add supplements (*e.g.,* glycols, shale inhibitors) to WBFs for the purpose of making WBFs have technical capabilities (*e.g.,* lubricity, shale suppression) similar to SBFs. EPA estimates that, under the zero discharge option, some operators would switch to WBF compositions with more non aqueous drilling fluid properties (*e.g.,* lubricity, shale suppression), and that these WBFs would exhibit greater aquatic toxicity.

EPA's analyses show that under the SBF-cuttings zero discharge option as compared to current practice, for U.S. Offshore waters existing sources, there would be an increase of 35 million pounds of cuttings annually shipped to shore for disposal in non-hazardous oilfield waste (NOW) sites and an increase of 166 million pounds of cuttings annually injected. In addition, under the SBF-cuttings zero discharge option, operators would use the more toxic OBFs. The zero discharge option for SBF-cuttings would lead to an increase in annual fuel usage of 358,664 BOE and an increase in annual air emissions of 5,602 tons. Finally, the SBF-cuttings zero discharge option in the U.S. Offshore waters would lead to an increase of 51 million pounds of WBF cuttings being discharged to U.S. Offshore waters. This pollutant loading increase is a result of GOM operators switching from efficient SBF drilling to less efficient WBF drilling.

EPA's analysis shows that the impacts of adequately controlled SBF discharges to the water column and benthic environment are of limited scope and duration. By contrast, the landfilling of OBF-cuttings is of a longer term duration and associated pollutants may affect ambient air, soil, and groundwater quality. EPA and DOE documented at least five CERCLA (or ''Superfund'') sites in Louisiana and California contaminated with oilfield wastes and more than a dozen other sites subject to Federal or State cleanup actions.

Nonetheless, while SBF-cuttings discharge with adequate controls is preferred over zero discharge in U.S. Offshore waters, SBF-cuttings discharge with inadequate controls is not preferred over zero discharge. EPA believes that to allow discharge of SBF-cuttings in U.S. Offshore waters, there must be appropriate controls to ensure that EPA's discharge limitations reflect the ''best available technology'' or other appropriate level of technology. EPA has worked with industry to address the appropriate determination of PAH content, sediment toxicity, biodegradation, quantity of SBF discharged, and formation oil contamination that are technically available, economically achievable, and have acceptable NWQIs. The final BAT limitations are a result of this effort and are discussed below.

EPA is today promulgating BAT of zero discharge for SBF-cuttings for Coastal Cook Inlet, Alaska except when Coastal Cook Inlet, Alaska, operators are unable to dispose of their SBF-cuttings using any of the following disposal options: (1) On-site re-injection (annular disposal or Class II UIC); (2) re-injection using a nearby Coastal or Offshore Class II UIC disposal well; or (3) onshore disposal using a nearby Class II UIC disposal well or land application. Coastal Cook Inlet, Alaska, operators are required to demonstrate to the NPDES permit controlling authority that none of the above three disposal options are technically feasible in order to qualify for the alternate BAT limitation. Coastal Cook Inlet, Alaska, operators that qualify for the alternate BAT limitation are allowed to discharge SBF-cuttings at the same level of BAT control as operators in Offshore waters. The NPDES permit controlling authority will use the procedure given in Appendix 1 to subpart D of 40 CFR part 435 to establish whether or not a Coastal Cook Inlet, Alaska, operator qualifies for the

SBF-cuttings zero discharge exemption. As stated in Appendix 1 to subpart D of 40 CFR part 435, the following factors are considered in the determination of whether or not Coastal Cook Inlet, Alaska, operators qualify for the SBF-cuttings zero discharge exemption: (1) Inability to establish formation injection in wells that were initially considered for annular or dedicated disposal; (2) inability to prove to UIC controlling authority that the waste will be confined to the formation disposal interval; (3) inability to transport drilling waste to an offshore Class II UIC disposal well or an onshore disposal site; and (4) whether or not there is no available land disposal facilities (*e.g.,* onshore re-injection, land disposal).

EPA finds that this option is technically available and economically achievable. Operators are currently barred from discharging OBFs, SBFs, and enhanced mineral oil based drilling fluids under the Cook Inlet NPDES general permit (64 FR 11889). As previously discussed in Section IV.E, EPA identified that many Cook Inlet operators in Coastal waters are using cuttings re-injection to comply with zero discharge disposal requirements for OBFs and OBF-cuttings. EPA contacted Cook Inlet operators (*e.g.,* Phillips, Unocal, Marathon Oil) and the State regulatory agency, AOGCC, for more information on the most recent re-injection practices of Coastal and Offshore Cook Inlet operators. AOGCC stated that there should be enough formation re-injection disposal capacity for the small number of non-aqueous drilling fluid wells (<5–10 wells per year) being drilled in Cook Inlet Coastal waters. Therefore, since Coastal Cook Inlet operators are already complying with zero discharge of OBF- and SBF-cuttings, this option is economically achievable as there are no incremental compliance costs.

AOGCC stated, however, that case specific limitations should be considered when evaluating disposal options (*see* Section IV.E). Cook Inlet, Alaska, operators may experience the following difficulties in attempting to comply with a zero discharge requirement for SBFs: (1) Inability to establish formation injection in wells that were initially considered for annular or dedicated Class II UIC disposal; (2) inability to prove to AOGCC's satisfaction that the waste will be confined to the formation disposal interval; and (3) inability to transport drilling waste to an offshore Class II UIC disposal well or an onshore disposal site. EPA believes that while these problems are currently not presented by drilling in Cook Inlet, they could be a problem in the future. Further, EPA believes this to be a greater problem in Cook Inlet where climate, tides, and its distance from commercial disposal sites make transportation to shore less feasible than in other offshore waters near the continental U.S. If EPA did not provide for some exceptions within the guideline itself, and these problems presented themselves beyond the time frame for requesting a Fundamentally Different Factors variance (under section 301(n)(2) of the CWA, 180 days) this would render zero discharge not achievable. Therefore, EPA believes it is reasonable to provide for some flexibility to the current practice of zero discharge in Cook Inlet.

EPA further finds the NWQIs of this option for Cook Inlet to be acceptable. As previously stated, few non-aqueous drilling fluid wells are drilled in Coastal Cook Inlet, Alaska (<5–10 wells per year). EPA finds that the small number of wells drilled per year (even if all of them are drilled using SBF) leads to very small increases in NWQIs. Tables 6 though 10 describe the annual air emissions and fuel usage for the three geographic regions including Cook Inlet, Alaska. In particular, a zero discharge requirement for SBFs and SBF-cuttings in Cook Inlet, Alaska, would lead to an annual increase of 94 tons of air emissions and 6,067 BOE fuel used for existing sources. EPA does not anticipate and new sources in Cook Inlet, Alaska. Consequently, EPA finds that the overall small increases in NWQIs from the zero discharge option, as compared to either of the two SBF-cuttings discharge options, in Coastal Cook Inlet, Alaska, are acceptable. The two SBF-cuttings discharge options show little change in NWQIs as compared to baseline (*see* Tables 6 though 9).

1. Stock Base Fluid Technical Availability and Economic Achievability

a. Introduction. As SBFs have developed over the past few years, the industry has come to use mainly a limited number of primary base fluids. These include the internal olefins, linear alpha olefins, poly alpha olefins, paraffinic oils, C_{12}–C_{14} vegetable esters of 2-hexanol and palm kernel oil, and ''low viscosity'' C_8 esters. These fluids represent virtually all the SBFs currently used in oil and gas extraction industry. EPA collected data on performance, environmental impact, and costs for these SBFs to develop the effluent limitations for today's final rule. The following definitions are used in this preamble to describe various SBFs: (1) Internal olefin (IO) refers to a series of isomeric forms of C_{16} and C_{18} alkenes; (2) linear alpha olefin (LAO) refers to a series of isomeric forms of C_{14} and C_{16} monoenes; (3) poly alpha olefin (PAO) refers to a mix mainly comprised of a hydrogenated decene dimer $C_{20}H_{62}$ (95%), with lesser amounts of $C_{30}H_{62}$ (4.8%) and $C_{10}H_{22}$ (0.2%); (4) vegetable ester refers to a monoester of 2-ethylhexanol and saturated fatty acids with chain lengths in the range C_8–C_{16}; and (5) ''low viscosity'' ester refers to an ester of natural or synthetic C_8 fatty acids and alcohols. EPA also has data on other SBF base fluids, such as enhanced mineral oil, paraffinic oils (*i.e.,* saturated hydrocarbons or ''alkanes''), and the traditional OBF base fluids: mineral oil and diesel oil.

The stock base fluid limitations in today's rule are based on the technology of product substitution. The promulgated limitations are technically available because they are based on currently available base fluids that can be used in the wide variety of drilling situations in U.S. offshore waters. EPA anticipates that the base fluids meeting all requirements would include vegetable esters, low viscosity esters, and internal olefins. In addition, based on current information, EPA believes that the stock base fluid controls on PAH content, sediment toxicity, and biodegradation rate being promulgated today are sufficient to only allow the discharge of only those base fluids (*e.g.,* esters, internal olefins) with lower bioaccumulation potentials (*i.e.,* log K_{ow} <3 to 3.5 and log K_{ow}> 6.5 to 7). Therefore, EPA found it was unnecessary to promulgate a separate limitation for bioaccumulation.

As previously stated in April 2000 (65 FR 21554), EPA considered basing the sediment toxicity and biodegradation stock limitations and standards solely on vegetable esters (*i.e.,* original esters) instead of the proposed C_{16}–C_{18} IO. EPA also considered subcategorizing the final rule to determine when vegetable esters are not practical and when C_{16}–C_{18} IOs could be used instead. EPA considered these options due to the potential for better environmental performance of vegetable ester-based drilling fluids. EPA and industry analytical testing show that esters have better sediment toxicity and biodegradation performance.

EPA rejected the option of basing sediment toxicity and biodegradation stock limitations and standards on vegetable esters due to several technical limitations. These technical limitations of vegetable esters preclude their use in all areas of the GOM, Offshore California, and Cook Inlet, Alaska. Vegetable ester technical limitations

include: (1) High viscosity compared with other IO SBFs at all temperatures, with an increasing difference as temperature decreases, leading to lower rates of penetration in wells and greater probability of losses due to higher equivalent circulating densities; (2) high gel strength in risers that develops when a vegetable ester-based SBF is not circulated; (3) a high temperature stability limit ranging from about 225 °F to perhaps 320 °F—the exact value depends on the detailed chemistry of the vegetable ester (*i.e.,* the acid, the alcohol) and the drilling fluid chemistry; (4) reduction of the thermal stability limit through hydrolysis when vegetable esters are in contact with highly basic materials (*e.g.,* lime, green cement) at elevated temperatures; and (5) less tolerance of the muds to contamination by seawater, cement, and drill solids than is observed for IO–SBFs (Docket No. W–98–26: Record No. IV.A.a.3, Attachment A2—''Limitations of Esters'; Record No. IV.A.a.13, Attachments Ester-51, 52, 53, 54, 56).

EPA also rejected the option of subcategorizing the use of esters to define drilling conditions when only esters could be allowed for a controlled discharge. EPA could not establish a ''bright line'' rationale to define the situation where only esters should be the benchmark fluid (*i.e.,* only esters would be allowed for a controlled discharge). EPA considered many of the engineering factors used for selection of a drilling fluid (*e.g.,* rig size and equipment; formation characteristics; water depth and environment; lubricity, rheological, and thixotropic requirements) and determined that this type of sub-categorization was not possible. EPA, however, is encouraging the use of esters by promulgating a higher ROC limitation and standard when esters are used.

EPA also considered basing sediment toxicity and biodegradation stock limitations and standards on low viscosity esters. Comments to the April 2000 NODA state that laboratory analyses, which were designed to simulate GOM conditions to which a fluid may be exposed, indicate that low viscosity esters have the following technical properties: (1) Similar or better viscosity than C_{16}–C_{18} IOs; (2) can be used to formulate stable low viscosity ester-based SBFs up to 300 °F; (3) can be used to formulate low viscosity ester-based SBFs to 16.0+ lbs/gal mud weight; (4) can reduce oil/water ratios to 70/30, thus reducing volumes of base fluid discharged; (5) high tolerance to drilled solids; (6) flat gels make it easier to break circulation, minimizing initial circulation pressures and subsequent risk of fracture; (7) high tolerance to seawater contamination; and (8) rheological properties can be adjusted by use of additives to suit specific conditions (Docket No. W–98–26, Record No. IV.A.a.7). EPA also received information on one well section drilled with low viscosity esters. Some of the results from this low viscosity ester well section were compared to the results from another well section in the same location where C_{16}–C_{18} IOs were used. These results show that the low viscosity ester had: (1) Comparable or better equivalent circulating densities (*i.e.,* acceptable fluid properties); and (2) faster ROP through better hole cleaning and higher lubricity (*i.e.,* fewer days required to drill to total depth which lead to less NWQI and overall drilling costs). The low viscosity esters are relatively new base fluids and have only recently been available to the market. Despite the results from the laboratory analyses and one well section, EPA does not believe that this is enough information to make the determination that low viscosity esters can be used in all or nearly all drilling conditions in the offshore U.S. waters (*e.g.,* differing formations, water depths, and temperatures). Therefore, EPA rejected the option of basing sediment toxicity and biodegradation stock limitations and standards on low viscosity esters. EPA is sufficiently satisfied, however, that low viscosity esters and vegetable esters provide better environmental performance (*e.g.,* sediment toxicity, biodegradation). Consequently, EPA is promulgating higher retention on cuttings discharge limitations where esters are used to encourage operators to use esters when possible.

b. PAH Content Technical Availability. Today's promulgated limitation of PAH content for U.S. Offshore waters is a weight ratio defined as the weight of PAH (as phenanthrene) per weight of the stock base fluid sample. The PAH weight ratio is 0.001%, or 10 parts per million (ppm). This limitation is based on the availability of base fluids that are free of PAHs and the detection of the PAHs by EPA Method 1654A, ''PAH Content of Oil by High Performance Liquid Chromatography with a UV Detector.'' Method 1654A was published in Methods for the Determination of Diesel, Mineral and Crude Oils in Offshore Oil and Gas Industry Discharges (EPA–821–R–92–008, incorporated by reference and available from National Technical Information Service at (703) 605–6000). As originally proposed in February 1999 (64 FR 5503), EPA is promulgating the use of the EPA Method 1654A for compliance with this PAH content BAT limitation.

EPA's promulgated PAH content limitation is technically available. Producers of several SBF base fluids have reported to EPA that their base fluids are free of PAHs. The base fluids which suppliers have reported are free of PAHs include IOs, LAOs, vegetable esters, low viscosity esters, certain enhanced mineral oils, synthetic paraffins, certain non-synthetic paraffins, and others. The use of these fluids can accommodate the broad varieties of drilling situations faced by industry in offshore U.S. waters (*see* SBF Development Document, Chapter IV). Compliance with the stock BAT limitation and NSPS on PAH content will be achieved by product substitution.

c. Sediment Toxicity Technical Availability. EPA is today promulgating a sediment toxicity stock base fluid limitation that would only allow the discharge of SBF-cuttings using SBF base fluids as toxic or less toxic, but not more toxic, than C_{16}–C_{18} IOs. Alternatively, this limitation could be expressed in terms of a ''sediment toxicity ratio'' which is defined as 10-day LC_{50} of C_{16}–C_{18} internal olefins divided by the 10-day LC_{50} of stock base fluid being tested. EPA is promulgating a sediment toxicity ratio of less than 1.0. Compliance with this limitation is determined by the 10-day *Leptocheirus plumulosus* sediment toxicity test (*i.e.,* ASTM E1367–92: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests With Marine and Estuarine Amphipods' (incorporated by reference and available from ASTM, 100 Bar Harbor Drive, West Conshohocken, PA 19428), supplemented with the preparation procedure specified in Appendix 3 of Subpart A of 40 CFR part 435). As originally proposed in February 1999 (64 FR 5503) and re-stated in April 2000 (65 FR 21549), EPA is promulgating the use of the ASTM E1367–92 method for compliance with this sediment toxicity BAT limitation.

Since the February 1999 proposal, EPA and other researchers conducted numerous 10-day *L. plumulosus* sediment toxicity tests on various SBF base fluids with natural and formulated sediments. Nearly all the SBF base fluids have lower sediment toxicity than diesel and mineral oil. Some SBF base fluids, however, show greater sediment toxicity than other SBF base fluids (*see* 65 FR 21550; Docket No. W–98–26, Record No. IV.A.a.13). The base fluids meeting this limitation include vegetable esters, low viscosity esters, internal olefins, and some PAOs (*see* 65

FR 21550; Docket No. W–98–26, Record No. IV.A.a.13).

EPA finds this limit to be technically available and economically achievable through product substitution because information in the rulemaking record supports the findings that vegetable esters, low viscosity esters, and internal olefins have performance characteristics enabling them to be used in the wide variety of drilling situations in offshore U.S. waters and meet today's promulgated limit.

EPA selected the C_{16}–C_{18} IO, which is the most popular drilling fluid in the GOM, as the basis for the sediment toxicity rate ratio limitation instead of the vegetable ester or low viscosity ester for several reasons: (1) EPA does not believe that vegetable esters can be used in all drilling situations; and (2) EPA does not have sufficient field testing information that low viscosity esters can be used in all drilling situations (*see* Section V.F.1.a). In addition, because of the uncertainty about ester performance, operators may not be encouraged to switch from OBFs or WBFs to SBF when properly installed and maintained. Specifically, vendor supplied data associated with these cuttings dryer deployments suggest that the overall cuttings dryer downtime (*i.e.,* time when cuttings dryer equipment is not operable) is approximately 1 to 2% (Docket No. W–98–26, Record No. IV.A.a.6). EPA finds this small downtime percentage as acceptable.

EPA discussed how it revised the BAT/NSPS-level solids control equipment configuration used in its analyses in the April 2000 NODA (65 FR 21559). EPA also discussed a range of management options regarding the BAT limitation for SBF retention on SBF-cuttings: (1) Two discharges from the BAT/NSPS-level solids control equipment configuration (*i.e.,* one discharge from the cuttings dryer and another discharge from the fines removal unit); (2) one discharge from the BAT/NSPS-level solids control equipment configuration (*i.e.,* one discharge from the cuttings dryer with the fines from the fines removal unit captured for zero discharge); and (3) zero discharge of SBF-cuttings. These three options are labeled as BAT/NSPS Option 1, BAT/NSPS Option 2, and BAT/NSPS Option 3, respectively. EPA estimates that 97% and 3% of the total cuttings are generated by cuttings dryer and fines removal unit, respectively.

EPA developed two numerical well averaged ROC limitations (*i.e.,* one for SBFs with the stock base fluid performance similar to esters and another for SBFs with the stock base fluid performance similar to C_{16}–C_{18} internal olefins) and based both of these ROC limitations on the technology of only one discharge from the cuttings dryer with the fines from the fines removal unit captured for zero discharge (*i.e.,* BAT/NSPS Option 2). The numerical well averaged ROC maximum limitation for SBFs (*i.e.,* 9.4%) with the environmental characteristics of esters is based on a combination of data from horizontal centrifuge, vertical centrifuge, squeeze press, and High–G linear shaker cuttings dryer technologies. The numerical well averaged ROC maximum limitation for SBFs (*i.e.,* 6.9%) with the environmental characteristics of C_{16}–C_{18} internal olefins is based on a combination of data from horizontal and vertical centrifuge cuttings dryer technologies. EPA estimates that operators, generally installing new equipment where none has been used in the past, will be able to choose from among the better technologies, designs, operating procedures, and maintenance procedures that EPA has considered to be among the best available technologies. EPA data demonstrates that operators properly using these cuttings dryer technologies will be able to comply with these final ROC numerical limitations. Data submitted to EPA show that operators using the vertical centrifuge and horizontal centrifuge are capable of achieving the lower ROC limitation (*i.e.,* 6.9%). Data submitted to EPA also show that operators using the vertical centrifuge, horizontal centrifuge, squeeze press, and High-G linear shaker are capable of achieving the higher ROC limitation (*i.e.,* 9.4%). More details on the observed performance of the individual technologies and details of calculation for the numerical limits are presented in the SBF Statistical Support Document and SBF Development Document.

EPA developed the two ROC limitations because EPA used a two part approach to control SBF-cuttings discharges. The first part is the control of which SBF are allowed for discharge through use of stock limitations (*e.g.,* sediment toxicity, biodegradation, PAH content, metals content) and discharge limitations (*e.g.,* diesel oil prohibition, formation oil prohibition, sediment toxicity, aqueous toxicity). The second part is the control of the quantity of SBF discharged with SBF-cuttings. As previously stated, EPA and industry sediment toxicity and biodegradation laboratory studies show that both vegetable esters and low viscosity esters have better environmental performance than all other SBF base fluids. However, because the technical availability of product substitution with esters was not demonstrated across the offshore subcategory, EPA rejected the option of basing sediment toxicity and biodegradation stock limitations and standards on vegetable esters and low viscosity esters (*see* V.F.1.a). EPA is sufficiently satisfied, however, that both esters provide better environmental performance (*e.g.,* sediment toxicity, biodegradation). Consequently, EPA is promulgating a higher retention on cuttings discharge limitation to encourage operators to use esters when possible. EPA estimates that a higher retention on cuttings discharge limitation for esters is equivalent to the same level of control as a lower retention on cuttings discharge limitation for all other SBFs that have poorer sediment toxicity and biodegradation performances.

In response to the April 2000 NODA, EPA received comments from an ester-based SBF manufacturer that EPA should create an incentive for operators to use ester-based SBFs by basing the ROC limitation for ester-based SBFs on baseline solids control equipment (*e.g.,* primary and secondary shale shakers, fines removal unit) (Docket No. W–98–26, Record No. IV.A.a.7). In late comments, this same commentor claimed that a ROC limitation based on any cuttings dryer technology would not provide any incentive for the use of ester-based SBFs (Docket No. W–98–26, Record No. IV.A.a.38). Further, they argued that the superior laboratory performance of these ester base fluids in terms of sediment toxicity and biodegradation justifies allowing them to be discharged with a ROC limitation based on baseline solids control equipment. EPA estimates that a ROC BAT limitation based on the baseline solids control equipment is above 15.3%.

While EPA is willing to expand the technology basis to allow the use of less effective cuttings dryers for ester-based SBFs (*e.g.,* squeeze press, High-G linear shakes), EPA is unwilling to entirely abandon the use of cuttings dryers for ester-based SBF drilling operations. EPA is unwilling to set a higher ROC limitation for SBFs with the environmental performance of ester-based SBFs based on baseline solids control technology because the environmental improvement resulting from the use of improved solids control technology (*i.e.,* cuttings dryers) outweighs the incremental ester laboratory sediment toxicity and biodegradation performance over internal olefins. Cuttings dryers promote pollution prevention through increased re-use of drilling fluids and prevent

significant amounts of pollutants from being discharged to the ocean.

EPA provides for variability from the long term average (LTA) of performance data from the candidate treatment technology or technologies. The LTA performance of the baseline solids control technology is 10.2%, as compared to the LTA of 4.8% based on data from all four cutting dryer technologies. This difference translates to 118 million pounds per year of pollutants being discharged using the existing and new model well counts for the selected BAT option (*i.e.,* BAT/NSPS Option 2) (*see* SBF Development Document). Further, as previously stated in the April 2000 NODA (65 FR 21553), field results show that: (1) Cuttings are dispersed during transit to the seabed and no cuttings piles are formed when SBF concentrations on cuttings are held below 5%; and (2) cuttings discharged from cuttings dryers (with SBF retention values under 5%) in combination with a sea water flush, hydrate very quickly and disperse like water-based cuttings. Thus, while EPA is willing to provide additional flexibility to dischargers of ester-based fluids, EPA believes that the appropriate technology basis that reflects BAT is cuttings dryers technology. In balancing the environmental effects of these additional ester-based SBFs discharges controlled with the use of baseline solids control technology against the environmental effects of lower internal olefin-based SBFs discharges controlled with the use of cuttings dryers, EPA has concluded that the improvement in solids control technology leading to lower values of ROC is a more significant factor than laboratory data for ester base fluids showing lower sediment toxicity and higher biodegradation.

EPA is also not convinced that the difference in ROC limitations provides no incentive to use ester-based SBFs, as the ester-based SBF manufacturer argues. EPA believes that the difference between 6.9% and 9.4% could provide an incentive for operators to use ester-based SBFs. As operators have increasingly installed cuttings dryers in the GOM (over three dozen successful deployments in the last two years), and as any SBF discharger installs new technology to comply with the lower ROC limitation (*i.e.,* 6.9%), operators may find that it is worthwhile to purchase ester-based SBFs in order to be able to operate with even a greater margin of flexibility under a limit of 9.4% as compared to 6.9%.

As this rule is performance based, EPA is not prohibiting the discharge of SBF-cuttings from the fines removal unit in order to comply with the base fluid retained on cuttings discharge BAT limitation. Operators are only required to show that the volume weighted average of all their SBF-cuttings discharges is below the discharge BAT limitation. EPA expects that most operators will be able to discharge cuttings from the cuttings dryer and fines removal unit and comply with this discharge BAT limitation. If, for example, the average retention of SBF on SBF-cuttings from a cuttings dryer is 6.00%, the average retention of SBF on SBF-cuttings from a fines removal unit is 12.00%, and the fines are observed to comprise 3% of the total cuttings discharged, then the well average is 6.18% (*i.e.,* (0.97) (6.00%) + (0.03)(12.00%) = 6.18%). If the well average for SBF retention from the cuttings dryer exceeds the discharge limit then in order to comply with this discharge BAT limitation all cuttings must be re-injected on-site or hauled to shore for land disposal. EPA finds that if this is the case, the limit is technologically available because operators have transported OBFs to shore since 1986 and have transported WBFs that do not meet the existing effluent limitations and standards since 1993.

EPA finds that both ROC limitations (*i.e.,* 6.9%, 9.4%) are technically available to the industry because they are based on product substitution and a statistical analysis of ROC performance from drilling conditions throughout offshore waters. The BAT limitations for controlling the amount of SBF discharged with SBF-cuttings are calculated such that nearly all well averages for retention are expected to meet these values using the selected technologies without any additional attention to design, operation, or maintenance. EPA data demonstrates that operators properly using these cuttings dryer technologies will be able to comply with these final ROC numerical limitations because: (1) These limits allow for variation in formation characteristics that may not exist in the United States; (2) operators, generally installing new equipment where none has been used in the past, will be able to choose from among the better technologies, designs, operating procedures, and maintenance procedures that EPA considers to be among the best available technologies; and (3) operators may elect to use SBFs with the stock base fluid performance of esters and horizontal or vertical centrifuge cuttings dryers to achieve a ROC well average well below the 9.4% ROC limitation.

Data used in the calculation of the numerical limits exclude retention results submitted without backup calculations (*i.e.,* without raw retort data) and include data from drilling operations in foreign waters (*e.g.,* Canada). EPA excluded ROC data without raw retort data (*e.g.,* masses and volumes of cuttings samples and recovered liquids taken during the retort method by the field technician) due to concerns over data quality (*e.g.,* no independent method to check data quality). EPA included ROC data from Canadian drilling operations to incorporate the variability of cuttings dryer performance in harder and less permeable formations that generally lead to higher ROC values. EPA estimates that the major factors leading to higher ROC values for all solids control equipment include: (1) Slower rates of penetration; (2) formations that are harder and less permeable; and (3) selection of certain drill bits. The Canadian ROC data come from formations that are generally much harder and less permeable than what is observed in the GOM. These harder formations generally lead to slower rates of penetration. The less permeable Canadian formations lead to fewer downhole losses of SBF. Downhole losses require the addition of fresh SBF to maintain volume requirements for the active mud system. These additions of fresh SBF to the active mud system help control the potential of build-up of fines. In addition, operators often use PDC drill bits in order to grind through the hard Canadian formations. This grinding action leads to smaller cuttings than is what is observed in the GOM. The smaller cuttings have more surface area for SBF than larger cuttings and generally have higher ROC values. Consequently, EPA's use of Canadian data in its analyses incorporate sufficient variability to model the formations in GOM, Offshore California, Cook Inlet, Alaska, and other offshore U.S waters where EPA does not have ROC data.

EPA finds that both well-average discharge BAT ROC limitations (*e.g.,* 6.9%, 9.4%) for base fluid on wet cuttings are economically achievable. According to EPA's analysis, in addition to reducing the discharge of SBFs associated with the cuttings, EPA estimates that this control will result in a net savings of $48.9 million ($1999) dollars per year. This savings results, in part, because the value of the SBF recovered is greater than the cost of installation of the improved solids control technology.

EPA concluded that a zero discharge requirement for SBF-cuttings from

existing sources and the subsequent increase use of OBFs and WBFs would result in: (1) Unacceptable NWQIs; and (2) more pollutant loadings to the ocean due to operators switching from SBFs to less efficient WBFs (*see* Sections II.B and V.F). For these reasons, EPA rejected the BAT zero discharge option for SBF-cuttings from existing sources.

EPA also requested comments in the April 2000 NODA (65 FR 21570) on the issue of rig compatibility with the installation of cuttings dryers (*e.g.,* vertical or horizontal centrifuges, squeeze press mud recovery units, High-G linear shakers). EPA received general information on the problems and issues related to cuttings dryer installations from API/NOIA stating that not all rigs are capable of installing cuttings dryers (Docket No. W–98–26, Record No. IV.A.a.13). In late comments, some industry commentors asserted that 48 of the 223 GOM drilling rigs are not capable of having a cuttings dryer system installed due to either rig space and/or rig design without prohibitive costs or rig modifications (Docket No. W–98–26, Record No. IV.B.b.33). Upon a further, more extensive review of GOM rigs, these same commentors asserted that 30 of 234 GOM drilling rigs are not capable of having a cuttings dryer system installed due to either rig space and/or rig design without prohibitive costs or rig modifications (Docket No. W–98–26, Record No. IV.B.b.34). EPA also received late comments from one operator, Unocal, stating that 36 of 122 Unocal wells drilled between late 1997 and mid-2000 were drilled with rigs that do not have 40 foot × 40 foot space available which they assert is necessary for a cuttings dryer installation (Docket No. W–98–26, Record No. IV.B.b.31). The API/NOIA rig survey and the Unocal rig survey identified most of the same rigs as unable to install cuttings dryers. However, two rigs (*i.e.,* Parker 22, Nabors 802) identified in the Unocal rig survey as having no space for a cuttings dryer installation were identified in the API/NOIA rig survey as each having a previous cuttings dryer installation. Unocal requested in late comments that EPA subcategorize certain rigs from being subject to the retention limit or that these rigs be able to discharge SBFs using performance that reflects current shale shaker technology (Docket No. W–98–26, Record No. IV.A.a.36).

Based on the record, EPA finds that current space limitations for cuttings dryers do not require a 40 foot × 40 foot space. Specifically, EPA has in the record information gathered during EPA's October 1999 site visit and information supplied by API/NOIA, MMS, and equipment vendors. EPA received information from a drilling fluid manufacturer and cuttings dryer equipment vendor, M-I Drilling Fluids, stating that they are not aware of any GOM rig not capable of installing a cuttings dryer (Docket No. W–98–26, Record No. IV.B.b.32). Another cuttings dryer equipment vendor, JB Equipment, asserted that there are at most only a few rigs that pose questionable installation problems and that they have yet to survey a rig that they could not install a cuttings dryer (Docket No. W–98–26, Record No. IV.B.b.48). JB Equipment also stated that inexperience with cuttings dryer installations may inhibit the ability of operators or rig owners to properly judge whether a cuttings dryer can be installed. JB Equipment cited an example where the operator concluded that a cuttings dryer could not be installed on a rig (Nabors 803) while JB Equipment surveying efforts identified the cuttings dryer installation for the same rig as one of the simplest installations JB Equipment performs. MMS also concluded that rigs do not need a 40 foot × 40 foot space to install a cuttings dryer and that, with the exception of a few jackup and platform rigs, there should not be any significant issues related to installing cuttings dryers on OCS drilling rigs (Docket No. W–98–26, Record No. IV.B.a.28). API/NOIA estimated that 150 square feet are required for a cuttings dryer installation in order to meet the ROC BAT limitation and NSPS (Docket No. W–98–26, Record No. IV.A.a.13). EPA also estimates that the minimum height clearance for a typical cuttings dryer installation is 6 feet (*see* SBF Development Document). The API/NOIA estimate is based on the installation of a horizontal centrifuge cuttings dryer (*i.e.,* MUD–6). The Unocal estimate is based on the vertical centrifuge cuttings dryer and is also characterized by other industry representatives and MMS as too high (Docket No. W–98–26, Record No. IV.B.b.34; Record No. IV.B.a.28). EPA's estimate of a typical vertical centrifuge installation is 15 feet × 15 feet (*i.e.,* 225 square feet) with a minimum height clearance of 11 feet (*see* SBF Development Document). EPA based the ROC BAT limitation and NSPS (*e.g.,* 6.9%) on the use of both these cuttings dryers for SBFs with the stock limitations of C_{16}–C_{18} IOs. Based on comments from operators, equipment vendors, and MMS, EPA believes that most of these shallow water rigs have the requisite 150–225 square feet available to install a cuttings dryer (*see* SBF Development Document). Therefore, EPA finds that operators are not required to have a 1,600 square foot space for a cuttings dryer installation in order to meet the ROC BAT limitation and NSPS. Proper spacing and placement of cuttings dryers in the solids control equipment system should prevent installation problems.

Because of the large discrepancy between EPA's record information and the space requirements asserted by the commenter (1,600 square feet versus EPA's 225 square feet + 11 feet in height for the vertical centrifuge or 150 square feet + 6 feet in height for the horizontal centrifuge—MUD–6), EPA does not necessarily believe that there are as many wells that cannot install cuttings dryers as the commentor (Unocal) claims. Further, based on scant detail supporting these assertions, and their lateness in the process, EPA has no basis upon which to assess them or verify them.

Moreover, EPA does not believe that it has enough information to reasonably subcategorize these facilities, nor did it have time to provide public notice of how it would define such a subcategory, given the court-ordered deadline for this rule. EPA does not believe that basing a subcategory by specifying a space requirement alone (*e.g.* operators that do not have a certain amount of deck space available on, below or adjacent to the deck would not be subject to this requirement) would be sufficient to prevent operators from configuring their other equipment in a manner that would enable them to fit into the subcategory. Such an exception might also lead to operators to make other assertions justifying that they should be included (*e.g.,* that while they have a certain amount of space available, safety reasons prevent placement of the technology on the rig). Without a solution to these issues, EPA is concerned that such a subcategorization would potentially be too broad and be unworkable.

For these reasons, EPA believes that the appropriate way to handle these concerns is through the fundamentally different factors (FDF) variance process. This process, provided for under CWA section 301(n), would allow operators to submit supporting data and information to EPA and would give the public the opportunity to comment on that data to determine whether an FDF is truly warranted for that drilling facility. EPA has authority over owners and operators, who are both dischargers, but the NPDES regulations require the operator to apply for the NPDES permit: ''When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain

a permit,'' (*see* 40 CFR 122.21(b)). Thus, mobile drill rig ''operators'' as dischargers can apply for FDFs (*see* 40 CFR 125.32; 122.21(b)).

EPA notes that the ROC limitations and standards do not preclude the use of SBFs if an operator cannot meet them if the operator can meet zero discharge through re-injection or shipment to shore. Historically, dischargers have used water-based fluids in shallow water wells and this may also be an option. EPA considers controlled WBF discharges preferable to uncontrolled SBF discharges. EPA examined the NWQIs associated with these zero discharge operations as acceptable (*see* SBF Development Document). The NWQIs of zero discharge for the shallow water wells are much smaller that those associated for the entire region covered by this rule. Further, while a SBF-cuttings discharge option with adequate controls is preferred over the zero discharge option for SBF-cuttings in U.S. Offshore waters, a SBF-cuttings discharge option with inadequate controls is not preferred over zero discharge. The retention limit is a very important control because it controls: (1) The amount of SBF discharged to the ocean; (2) the biodegradation rate of discharged SBF; and (3) the potential for SBF-cuttings to develop cuttings piles and mats which are detrimental to the benthic environment. In short, EPA does not view existing shale shaker technology (or performance of other technology equivalent to shale shaker technology) to constitute the appropriate level of control under BAT or BADT (NSPS).

EPA has also decided that solids accumulated at the end of the well (''accumulated solids'') and wash water used to clean out accumulated solids or on the drill floor are associated with drill cuttings and are therefore not controlled by the zero discharge requirement for SBFs not associated with drill cuttings (*see* Section V.C). EPA has decided to control accumulated solids and wash water under the discharge requirements for cuttings associated with SBFs. The amount of SBF base fluid discharged with discharged accumulated solids will be estimated using procedures in Appendix 7 to subpart A of 40 CFR part 435 and incorporated into the base fluid retained on cuttings numeric limitation or standard. The source of the pollutants in the accumulated solids and associated wash water are drill cuttings and drilling fluid solids (*e.g.,* barite). The drill cuttings and drilling fluid solids can be prevented from discharge with SBF-cuttings due to equipment design (*e.g.,* sand traps, sumps) or improper maintenance of the equipment (*e.g.,* failing to ensure the proper agitation of mud pits). EPA agrees with commentors that the discharge of SBF associated with accumulated solids in the SBF active mud system and the associated wash water is normally a one-time operation performed at the completion of the SBF well (*e.g.,* cleaning out mud pits and solids control equipment).

The quantity of SBF typically discharged with accumulated solids and wash water is relatively small. The SBF fraction in the 75 barrels of accumulated solids is approximately 25% and generally only very small quantities of SBF are contained in the 200 to 400 barrels of associated equipment wash water. Current practice is to retain accumulated solids for zero discharge or recover free oil from accumulated solids prior to discharge. Since current practice is to recover free oil and discharge accumulated solids, the controlled discharge option for SBF-cuttings represents current practice and is economically achievable. Moreover, recovering free oil from accumulated solids prior to discharge has no unacceptable NWQIs. EPA defines accumulated solids and wash water as associated with drill cuttings. Therefore, operators will control these SBF-cuttings wastes using the SBF stock limitations and cuttings discharge limitations. As compliance with EPA's SBF stock limitations and cuttings discharge limitations does not require the processing of all SBF-cuttings wastes through the solids control technologies (*e.g.,* shale shakers, cuttings dryers, fines removal units), operators may or may not elect to process accumulated solids or wash water through the solids control technologies.

EPA is also promulgating a set of BMPs for operators to use that demonstrates compliance with the numeric ROC limitation and therefore reduces the retort monitoring otherwise required to determine compliance with the numeric ROC limitation. This option combines the set of BMPs that represent current practice with BMPs that are associated with the use of improved solids control technology. This option is technologically available and economically achievable for the same reasons that apply to compliance with the ROC numerical limitations. Examples of BMPs that represent current practices are, for example, use of mud guns, proper mixing procedure, elimination of settling places for accumulated solids. Examples of BMPs associated with the use of the new solids control technology are, for example, operating cuttings dryers in accordance with the manufacturer's specifications and maintaining a certain mass flux. If operators elect to use this BMP option, they will be required to demonstrate compliance through limited retort monitoring of cuttings and additional BMP paperwork. Paperwork requirements are detailed in Appendix 7 of subpart A of 40 CFR part 435. Paperwork cost and burden estimates are detailed in Section IX.D of the preamble.

d. *Sediment Toxicity of SBF Discharged with Cuttings.* As originally proposed in February 1999 (64 FR 5491) and re-stated in April 2000 (65 FR 21557), EPA is today promulgating a BAT limitation to control the maximum sediment toxicity of the SBF discharged with cuttings. This BAT limitation controls the sediment toxicity of the SBF discharged with cuttings as a non-conventional pollutant parameter and as an indicator for other pollutants in the SBF discharged with cuttings. Some of the toxic, priority, and non-conventional pollutants in the SBF discharged with cuttings may include: (1) The base fluids such as enhanced mineral oils, internal olefins, linear alpha olefins, poly alpha olefins, paraffinic oils, C_{12}–C_{14} vegetable esters of 2-hexanol and palm kernel oil, ''low viscosity'' C_8 esters, and other oleaginous materials; (2) barite which is known to generally have trace contaminants of several toxic heavy metals such as mercury, cadmium, arsenic, chromium, copper, lead, nickel, and zinc; (3) formation oil which contains toxic and priority pollutants such as benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol; and (4) additives such as emulsifiers, oil wetting agents, filtration control agents, and viscosifiers.

The sediment toxicity of the SBF discharged with cuttings is measured by the modified sediment toxicity test (*i.e.,* ASTM E1367–92: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests With Marine and Estuarine Amphipods'' (incorporated by reference and available from ASTM, 100 Bar Harbor Drive, West Conshohocken, PA 19428), supplemented with the preparation procedure specified in Appendix 3 of subpart A of 40 CFR part 435) using a natural sediment or formulated sediment, 96-hour testing period, and *Leptocheirus plumulosus* as the test organism. EPA is today promulgating a sediment toxicity limitation for the SBF discharged with cuttings at the point of discharge that would only allow the discharge of SBF-cuttings using SBFs as toxic or less toxic, but not more toxic, than C_{16}–C_{18}

IOs SBFs. Alternatively, this limitation could be expressed in terms of a ''SBF sediment toxicity ratio'' which is defined as 96-hour LC_{50} of C_{16}–C_{18} internal olefins SBF divided by the 96-hour LC_{50} of the SBF being discharged with cuttings at the point of discharge. EPA is promulgating a SBF sediment toxicity ratio of less than 1.0.

EPA finds that the sediment toxicity test at the point of discharge is practical as an indicator of the sediment toxicity of the drilling fluid at the point of discharge. As previously stated, establishing discharge limits on toxicity encourages the use of less toxic drilling fluids and additives. The modifications to the sediment toxicity test include shortening the test to 96-hours. Shortening the test will allow operators to continue drilling operations while the sediment toxicity test is being conducted on the discharged drilling fluid. Moreover, discriminatory power is substantially reduced for the 10-day test on drilling fluid as compared to the 96-hour test (*i.e.,* the 10-day test is of lower practical use in determining whether a SBF is substantially different from OBFs). Finally, operators discharging WBFs are already complying with a biological test at the point of discharge, the 96-hour SPP toxicity test, which tests whole WBF aquatic toxicity using the test organism *Mysidopsis bahia.*

The promulgated sediment toxicity limitation would be achievable through product substitution. EPA anticipates that the base fluids meeting the sediment toxicity limitation would include vegetable esters, low viscosity esters, and internal olefins. The reference C_{16}–C_{18} IOs SBF will be formulated to meet the specifications in Table 1 and also contained in Appendix 8 of subpart A of 40 CFR part 435. The sediment toxicity discharge limitation is technically and economically achievable because it is based on currently available base fluids that can be used and are used across the wide variety of drilling situations found in U.S. offshore waters. EPA estimates minimal monitoring costs associated with this limitation. Additionally, the sediment toxicity discharge limitation will not lead to an increase of NWQIs.

TABLE 1.—PROPERTIES FOR REFERENCE C_{16}–C_{18} IOS SBF USED IN DISCHARGE SEDIMENT TOXICITY TESTING

Mud weight of SBF discharged with cuttings (pounds per gallon)	Reference C_{16}–C_{18} IOs SBF (pounds per gallon)	Reference C_{16}–C_{18} ISOs SBF synthetic to water ratio (%)
8.5–11	9.0	75/25
11–14	11.5	80/20
> 14	14.5	85/15
Plastic Viscosity (PV), centipoise (cP)	.....	12–30
Yield Point (YP), pounds/100 sq. ft.	.....	10–20
10-second gel, pounds/100 sq. ft.	.....	8–15
10-minute gel, pounds/100 sq. ft.	.....	12–30
Electrical stability, V	.....	> 300

G. NSPS Technology Options Considered and Selected for Drilling Fluid Associated with Drill Cuttings

The general approach followed by EPA for developing NSPS options was to evaluate the best demonstrated SBFs and processes for control of priority toxic, non-conventional, and conventional pollutants. Specifically, EPA evaluated the technologies used as the basis for BPT, BCT and BAT. The Agency considered these options as a starting point when developing NSPS options because the technologies used to control pollutants at existing facilities are fully applicable to new facilities.

EPA has not identified any more stringent treatment technology option which it considered to represent NSPS level of control applicable to the SBF-cuttings wastestream. Further, EPA has made a finding of no barrier to entry based upon the establishment of this level of control for new sources. Therefore, EPA is promulgating that NSPS be established equivalent to BPT and BAT for conventional, priority, and non-conventional pollutants. EPA concluded that NSPS are technologically and economically achievable for the same reasons that BAT is available and BPT is practical. EPA also concluded that NWQIs are reduced under the selected NSPS for new wells due to the increased efficiency of SBF drilling.

EPA concluded that a zero discharge requirement for SBF-cuttings from new sources and the subsequent increased use of OBFs and WBFs would result in: (1) unacceptable NWQIs; and (2) more pollutant loadings to the ocean due to operators switching from SBFs to less efficient WBFs (*see* Sections II.B and V.F).

For the same reasons that the BAT limitations promulgated in today's rule are technologically and economically achievable, the promulgated NSPS are also technologically and economically achievable. EPA's analyses show that under the SBF zero discharge option for all areas as compared to current practice as a basis for new source standards there would be an increase of 3.4 million pounds of cuttings annually shipped to shore for disposal in NOW sites and an increase of 10.2 million pounds of cuttings annually injected. This zero discharge option would lead to an increase in annual fuel use of 18,067 BOE and an increase in annual air emissions of 528 tons. Finally, the SBF zero discharge option for the GOM would lead to an increase of 7.5 million pounds of WBF-cuttings being discharged to U.S. Offshore waters. This pollutant loading increase is a result of operators in U.S. Offshore waters (in the GOM) switching from efficient SBF drilling to less efficient WBF drilling. EPA found these levels of NWQIs unacceptable and rejected the NSPS zero discharge option for SBF-cuttings from new sources, except in Coastal Cook Inlet, Alaska.

H. PSES and PSNS Technology Options

EPA is not establishing pretreatment standards for the facilities covered by this rule. Based on information in the record, EPA has not identified any existing offshore or Cook Inlet coastal oil and gas extraction facilities that discharge SBF and SBF-cuttings to publicly owned treatment works (POTWs), nor are any new facilities projected to direct these wastes in such manner.

I. Best Management Practices (BMPs) to Demonstrate Compliance with Numeric BAT Limitations and NSPS for Drilling Fluid Associated with Drill Cuttings

Sections 304(e), 308(a), 402(a), and 501(a) of the CWA authorize the Administrator to prescribe BMPs as part of effluent limitations guidelines and standards or as part of a permit (*see* Section II.A.7). The BMP alternatives to numeric limitations and standards in this final rule are directed, among other things, at preventing or otherwise controlling leaks, spills, and discharges of toxic and hazardous pollutants in SBF cuttings wastes (*see* 65 FR 21569 for a list of the toxic and hazardous pollutants controlled by these BMPs).

As discussed in the April 2000 NODA (65 FR 21568), EPA considered three options for the final rule for the BAT limitation and NSPS controlling SBF retained on discharged cuttings: (1) A single numeric discharge limitation with an accompanying compliance test method; (2) allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method, or as an alternative, a set of BMPs that employs limited cuttings monitoring; or (3) allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method or an alternative set of BMPs that employ no cuttings monitoring. Under the third BMP option for SBF-cuttings (*i.e.,* cuttings discharged and not monitored), EPA also considered whether to require as part of the BMP option, the use of a cuttings dryer as representative of BAT/NSPS or to make the use of a cuttings dryer optional.

EPA selects the second BMP option (*i.e.,* allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method, or as an alternative, a set of BMPs that employs limited cuttings monitoring) in the final rule. EPA selects this option as it provides for a reasonable level of flexibility and is based on quantifiable performance measures. EPA analyses show that cuttings monitoring for the first third of the SBF footage drilled for a SBF well interval is a reliable indicator of the remaining two-thirds of the SBF-interval (*see* SBF Statistical Support Document; Docket No. W–98–26, Record No. III.B.a.18; Record No. III.B.b.15). Procedures for demonstrating compliance with the selected BMP option are given in Appendix 7 to subpart A of part 435.

For the final rule, EPA did not have enough data from across a wide variety of drilling conditions (*e.g.,* formation, water depth, rig size) to demonstrate that BMPs without cuttings monitoring are equivalent to a numeric ROC limitation or standard. EPA is also concerned that a set of BMPs without cuttings monitoring is not as objective to enforce. This is because with a numeric limitation or with the selected BMP option with reduced cuttings monitoring, operators will need to keep records demonstrating compliance with the numeric limitation. By contrast, under a BMP option with no numeric limit, there is no objective performance measure. This presents a particular problem offshore, where real-time inspections are not as practical as on land based industries. Therefore, EPA rejected the third BMP option and cuttings dryer sub-option for SBF-cuttings (*i.e.,* allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method or an alternative set of BMPs that employ no cuttings monitoring). EPA concluded that BMP option one and BMP option two demonstrate the same level of compliance with the well averaged ROC limitation and standard (*see* SBF Statistical Support Document). Therefore, EPA selected BMP option two over BMP option one to provide operators with greater flexibility to demonstrate compliance with the well averaged ROC limitation and standard.

The BMP option promulgated in this final rule includes information collection requirements that are intended to control the discharges of SBF in place of numeric effluent limitations and standards. These information collection requirements include, for example: (1) Training personnel; (2) analyzing spills that occur; (3) identifying equipment items that might need to be maintained, upgraded, or repaired; (4) identifying procedures for waste minimization; (4) performing monitoring (including the operation of monitoring systems) to establish equivalence with a numeric cuttings retention limitation and to detect leaks, spills, and intentional diversion; and (5) generally to periodically evaluate the effectiveness of the BMP alternatives.

BMP option two also requires operators to develop and, when appropriate, amend plans specifying how operators will implement BMP option two, and to certify to the permitting authority that they have done so in accordance with good engineering practices and the requirements of the final regulation. The purpose of those provisions is, respectively, to facilitate the implementation of BMP option two on a site-specific basis and to help the regulating authorities to ensure compliance without requiring the submission of actual BMP Plans. Finally, the recordkeeping provisions are intended to facilitate training, to signal the need for different or more vigorously implemented BMP alternatives, and to facilitate compliance assessment. Details on burden and cost estimates associated with these additional paperwork requirements are discussed in Section IX.D.

VI. Costs and Pollutant Reductions for Final Regulation

A. Compliance Costs

EPA has analyzed the compliance costs and incremental compliance costs or savings beyond current industry practices and requirements, as well as pollutant loadings and incremental loadings or reductions, EPA has performed these analyses for the Gulf of Mexico, offshore California, and coastal Cook Inlet, Alaska, for baseline (current) costs and three control option costs. (Compliance costs were not developed for other offshore regions in Alaska where oil and gas production activity exists because discharges of drill cuttings is not expected to occur in these areas.) The three technology-based options considered are: (1) BAT/NSPS Option 1 (controlled discharge option with discharges from the cuttings dryer and fines removal unit); (2) BAT/NSPS Option 2 (controlled discharge option with discharges from the cuttings dryer but not the fines removal unit); and (3) BAT/NSPS Option 3 (Zero Discharge Option). Compliance costs/savings and pollutant increases/reductions are based on: (1) Projected annual drilling activity in the three geographic regions; (2) model well volumes and waste characteristics; and (3) technology and monitoring costs.

The compliance cost analysis begins with the development of defined populations of wells on a regional and well-type basis, develops per-well estimates from an analysis of line-item costs, and then aggregates costs into total regional and well-type costs by applying per well costs to appropriate populations of wells. EPA estimates baseline compliance costs for current industry waste management practices and for compliance with each regulatory option. EPA then calculated incremental compliance costs, which reflect the difference between compliance costs for a regulatory option and baseline compliance costs and the net compliance costs or savings which incorporate the costs along with savings realized by recovering drilling fluids and more efficient drilling. Tables 2 and

3, for existing and new sources respectively, list the total annual baseline costs, compliance costs, incremental compliance costs, cost savings, and net incremental compliance costs, calculated for each geographic area and regulatory option.

1. Large Volume Discharges

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Table 2: Summary Annual Cost/Savings, Existing Sources (1999$/year)

Technology Basis	Cost (savings) in 1999$/year			
	Gulf of Mexico [wells/year]	Offshore California [wells/year]	Cook Inlet, Alaska [wells/year]	Total [wells/year]
Baseline/Current Practice Technology Costs:				
Discharge with 10.2% retention of SBF on cuttings	29,437,863 [201]	0 [0]	0 [0]	29,437,863 [201]
Zero Discharge via land disposal or onsite injection				
Current OBF-drilled wells	10,034,296 [67]	413,282 [2]	516,602 [2]	10,964,179 [71]
Current WBF-drilled wells	-- [857]	-- [5]	-- [4]	-- [866]
Total Baseline Costs per Area	**39,472,159** [1,125]	**413,282** [7]	**516,602** [6]	**40,402,042** [1,138]
WBF-Related Cost Savings:				Total per Technology:
BAT/NSPS 1: ROP-related rig cost savings	(33,280,000)	0	0	
Discharged WBF cost savings	(15,552,540)	0	0	**(48,832,540)**
BAT/NSPS 2: ROP-related rig cost savings	(33,280,000)	0	0	
Discharged WBF cost savings	(15,552,540)	0	0	**(48,832,540)**
BAT/NSPS 3: Zero Discharge				**0**
Technology Option Costs:				
BAT/NSPS 1: Discharge of SBF cuttings and fines	35,569,256 [264]	0 [0]	266,864 [1]	35,836,120 [265]
Zero Discharge via land disposal or onsite injection				
Projected OBF-drilled wells	5,992,961 [40]	413,282 [2]	349,706 [1]	6,755,969 [43]
Projected WBF-drilled wells	-- [803]	-- [5]	-- [4]	-- [812]
Total BAT/NSPS Option 1	**41,562,237** [1,107]	**413,282** [7]	**616,570** [6]	**42,592,088** [1,120]
BAT/NSPS 2: Discharge SBF cuttings/zero discharge fines	35,749,388 [264]	0 [0]	266,864 [1]	36,016,252 [265]
Zero Discharge via land disposal or onsite injection				
Projected OBF-drilled wells	5,992,981 [40]	413,282 [2]	349,706 [1]	6,755,969 [43]
Projected WBF-drilled wells	-- [803]	-- [5]	-- [4]	-- [812]
Total BAT/NSPS Option 2	**41,742,369** [1,107]	**413,282** [7]	**616,570** [6]	**42,772,221** [1,120]
BAT/NSPS Option 3: Zero Discharge of SBF	5,318,258 [11]	0 [0]	0 [0]	5,318,258 [12]
Zero Discharge via land disposal or onsite injection				
Projected OBF-drilled wells	62,886,162 [237]	413,282 [2]	516,602 [2]	63,816,045 [241]
Projected WBF-drilled wells	-- [877]	-- [5]	-- [4]	-- [886]
Total BAT/NSPS Option 3	**68,204,419** [1,125]	**413,282** [7]	**516,602** [6]	**69,134,303** [1,138]

Technology Basis	Cost (savings) in 1999$/year			
	Gulf of Mexico [wells/year]	Offshore California [wells/year]	Cook Inlet, Alaska [wells/year]	Total [wells/year]
Incremental Compliance Costs (total annual):				
BAT/NSPS 1: Discharge of SBF cuttings and fines	2,090,078	0	99,968	**2,190,046**
BAT/NSPS 2: Discharge SBF cuttings; zero discharge fines	2,270,210	0	99,968	**2,370,178**
BAT/NSPS 3: Zero Discharge	28,732,260	0	0	**28,732,260**
NET Incremental Annual Compliance Costs (Savings):				
BAT/NSPS 1: Discharge SBF cuttings and fines	(46,742,462)	0	99,968	**(46,642,494)**
BAT/NSPS 2: Discharge SBF cuttings/zero discharge fines	(46,562,330)	0	99,968	**(46,462,362)**
BAT/NSPS 3: Zero Discharge	28,732,260	0	0	**28,732,260**

Table 3: Summary Annual Cost/Savings, New Sources (1999$/year)

Technology Basis	Cost (savings) in 1999$/year
	Gulf of Mexico [wells/year-wpy]
Baseline/Current Practice Technology Costs:	
Discharge with 10.2% retention of SBF on cuttings	2,152,540 [20 wpy]
Zero Discharge via land disposal or onsite injection	
Current OBF-drilled wells	221,430 [2 wpy]
Current WBF-drilled wells	-- [38 wpy]
Total Baseline Costs	**2,373,970** [60 wpy]
WBF-Related Cost Savings:	
BAT/NSPS 1: ROP-related rig cost savings	(1,440,000)
Discharged WBF cost savings	(683,505)
Total WBF-Related Cost Savings	**(2,123,505)**
BAT/NSPS 2: ROP-related rig cost savings	(1,440,000)
Discharged WBF cost savings	(683,505)
Total WBF-Related Cost Savings	**(2,123,505)**
BAT/NSPS 3: Zero Discharge	**0**

Technology Basis	Cost (savings) in 1999$/year
	Gulf of Mexico [wells/year-wpy]
Technology Option Costs:	
BAT/NSPS 1: Discharge of SBF cuttings and fines	1,902,672 [24 wpy]
Zero Discharge via land disposal or onsite injection	
Projected OBF-drilled wells	110,715 [1 wpy]
Projected WBF-drilled wells	-- [35 wpy]
Total BAT/NSPS Option 1	**2,013,387** [60 wpy]
BAT/NSPS 2: Discharge SBF cuttings/zero discharge fines	1,906,776 [24 wpy]
Zero Discharge via land disposal or onsite injection	
Projected OBF-drilled wells	110,715 [1 wpy]
Projected WBF-drilled wells	-- [35 wpy]
Total BAT/NSPS Option 2	**2,017,491** [60 wpy]
BAT/NSPS 3: Zero Discharge of SBF	710,889 [3 wpy]
Zero Discharge via land disposal or onsite injection	
Projected OBF-drilled wells	2,039,092 [15 wpy]
Projected WBF-drilled wells	-- [42 wpy]
Total BAT/NSPS Option 3	**2,749,981** [60 wpy]
Incremental Compliance Costs (total annual):	
BAT/NSPS 1: Discharge of SBF cuttings and fines	**(360,583)**
BAT/NSPS 2: Discharge SBF cuttings; zero discharge fines	**(356,479)**
BAT/NSPS 3: Zero Discharge	**376,011**
NET Incremental Annual Compliance Costs (Savings):	
BAT/NSPS 1: Discharge SBF cuttings and fines	**(2,484,088)**
BAT/NSPS 2: Discharge SBF cuttings/zero discharge fines	**(2,479,984)**
BAT/NSPS 3: Zero Discharge	**376,011**

2. Small Volume Discharges

As previously stated, EPA learned that SBF is controlled with zero discharge at the drill floor, in the form of vacuums and sumps to retrieve spilled fluid and associated wash water. EPA also learned that approximately 75 barrels of fine solids and barite, which have an approximate SBF content of 25%, can accumulate in the dead spaces of the mud pit, sand trap, and other equipment in the drilling fluid circulation system. Current practice is to either wash these solids out with water for overboard discharge, or to retain the waste solids for disposal. Several hundred barrels (approximately 200 to 400 barrels) of water are used to wash out the mud pits. Industry representatives also indicated to EPA that those oil and gas extraction operations that discharge wash water and accumulated solids first recover free SBF.

No additional costs were considered for controlling the minor spills of SBF (*e.g.*, < 5 gallons spilled during each drill string connection or disconnection) at the drill floor as: (1) Zero discharge practices for recovering SBF at the drill floor during drilling are the current practice; and (2) current practice is also to recover free SBF from the wash water used at the drill floor. Additionally, since current practice is to first recover free SBF from accumulated solids and discharge the accumulated solids with wash water, no additional costs were

considered for controlling these discharges.

EPA did not select zero discharge for management of these accumulated solids and associated wash water. EPA is defining these wastes as being associated with SBF-cuttings and subject to the same requirements as other SBF discharges associated with SBF-cuttings. In particular, the final rule requires operators to first recover free oil from any accumulated solids or associated wash water prior to discharging the accumulated solids and associated wash water. These practices are related to the current BPT limitations (*i.e.,* no discharge of free oil) and current industry practice using solids control equipment in order to comply with the no free oil (sheen test) and SPP toxicity requirements. Accordingly, the requirement to recover free oil from accumulated solids and associated wash water prior to discharge is technologically and economically achievable with no additional NWQIs. Retort monitoring will also be performed on the accumulated solids and the retort monitoring results will be incorporated into the overall well-average SBF retained on cuttings value as described in Appendix 7 of Subpart A of 40 CFR 435.

B. Pollutant Reductions

The methodology for estimating pollutant loadings and incremental pollutant loadings (reductions) effectively parallels that of the compliance cost analysis. The pollutant loadings analysis uses data from EPA and industry sources that quantify the pollutant characteristics of drilling fluids and cuttings waste streams (typically in, or converted to, a per barrel basis). Waste volumes for the four model well types (DWD, DWE, SWD, SWE) are coupled with these per barrel pollutant quantities to obtain per well estimates of pollutant loadings. These per well estimates are then coupled with the same well count data as used in the cost analysis to derive well type and aggregate regional pollutant loadings for the baseline and all options. Similar to the cost analysis, incremental loadings (or removals) are obtained by difference between the estimated loadings of each option less baseline loadings, at both the BAT and NSPS level of control. This methodology is presented in more detail in the SBF Development Document.

The loadings and non-water quality impacts of wastes subject to zero discharge limitations by this rule are important factors in its development. Zero discharge wastes have two fates: they are injected into sub-seabed formations onsite or they are transported to shore for disposal via land farming or injection. The allocation of zero discharge wastes between onsite injection versus onshore disposal follow the same well type and regional assumptions as were used for the cost analysis. Zero discharge loadings (removals) are determined identically to discharge loadings; they are presented in detail in the Development Document and are summarized below.

Table 4 presents a summary of industry-wide results, by region, for BAT baseline loadings, both discharge options, and the zero discharge option, as well as their incremental loadings (removals). Table 5 presents this information for new sources.

The BCT cost test evaluates the reasonableness of BCT candidate technologies as measured from BPT level compliance costs and pollutant reductions. The proposed BCT level of regulatory control is equivalent to the BPT level of control for both the discharge options and the zero discharge option. If there is no incremental difference between BPT and BCT, there is no cost to BCT and thus the option passes both BCT cost tests.

Table 4: Summary Annual SBF Pollutant Loadings, Existing Sources (lbs/year)

Technology Basis	SBF Pollutant Loadings (reductions) in pounds/year [wells/year-wpy]			
	Gulf of Mexico	Offshore California	Cook Inlet, Alaska	Total
Baseline/Current Practice Technology Loadings:				
Discharge with LTA of 10.2% SBF ROC	237,890,828 [201 wpy]	NA	NA	237,890,828 [201 wpy]
Discharge of WBF and cuttings	2,093,084,293 [857 wpy]	9,617,040 [5 wpy]	8,407,772 [4 wpy]	2,111,109,104 [866 wpy]
Discharge of OBF	0 [67 wpy]	0 [2 wpy]	0 [2 wpy]	0 [71 wpy]
Total Baseline Loadings per Area	2,330,975,121 [1,125 wpy]	9,617,040 [7 wpy]	8,407,772 [6 wpy]	2,348,999,932 [1,138 wpy]
Technology Option Loadings:				
BAT/NSPS Option 1				
Discharge with LTA of 4.03% SBF ROC	259,628,314 [264 wpy]	0 [0 wpy]	552,796 [1 wpy]	260,181,110 [265 wpy]
Discharge of WBF and cuttings	1,963,501,883 [803 wpy]	9,617,040 [5 wpy]	8,407,772 [4 wpy]	1,981,526,694 [812 wpy]
Discharge of OBF	0 [40 wpy]	0 [2 wpy]	0 [1 wpy]	0 [43 wpy]
Total BAT/NSPS Option 1 Loadings per Area	2,223,130,197 [1,107 wpy]	9,617,040 [7 wpy]	8,960,568 [6 wpy]	2,241,707,804 [1,120 wpy]
BAT/NSPS Option 2				
Discharge with LTA of 3.82% SBF ROC	252,066,749 [264 wpy]	0 [0 wpy]	536,696 [1 wpy]	252,603,445 [265 wpy]
Discharge of WBF and cuttings	1,963,501,883 [803 wpy]	9,617,040 [5 wpy]	8,407,772 [4 wpy]	1,981,526,804 [812 wpy]
Discharge of OBF	0 [40 wpy]	0 [2 wpy]	0 [1 wpy]	0 [43 wpy]
Total BAT/NSPS Option 2 Loadings per Area	2,215,568,632 [1,107 wpy]	9,617,040 [7 wpy]	8,944,468 [6 wpy]	2,234,130,139 [1,120 wpy]
BAT/NSPS Option 3 - Zero Discharge				
Discharge of SBF on cuttings	0 [11 wpy]	0 [0 wpy]	0 [1 wpy]	0 [12 wpy]
Discharge of WBF and cuttings	2,144,121,984 [877 wpy]	9,617,040 [5 wpy]	8,407,772 [4 wpy]	2,162,146,796 [886 wpy]
Discharge of OBF	0 [237 wpy]	0 [2 wpy]	0 [1 wpy]	0 [240 wpy]
Total BAT/NSPS Option 3 Loadings per Area	2,144,121,984 [1,125 wpy]	9,617,040 [7 wpy]	8,407,772 [6 wpy]	2,162,146,796 [1,138 wpy]
Incremental Technology Option Loadings (Reductions):				
BAT/NSPS Option 1				(107,292,128)
BAT/NSPS Option 2				(114,869,793)
BAT/NSPS Option 3- Zero Discharge				(186,853,137)

Note: The following terms are used in this table: long-term average (LTA) and retention on cuttings (ROC)

TABLE 5.—SUMMARY ANNUAL SBF POLLUTANT LOADINGS, NEW SOURCES

[In pounds/year]

Technology basis	SBF pollutant loadings (reductions)—Gulf of Mexico
Baseline/Current Practice Technology Loadings:	
Discharge with LTA of 10.2% SBF ROC	17,405,127
Discharge of WBF and cuttings	92,903,606
Discharge of OBF	0
Total Baseline Loadings	110,308,733
Technology Option Loadings:	
BAT/NSPS Option 1.	
Discharge with LTA of 4.03% SBF ROC	20,241,106
Discharge of WBF and cuttings	87,462,923
Discharge of OBF	0
Total NSPS 1 Loadings	107,704,029
BAT/NSPS Option 2.	
Discharge with LTA of 3.82% SBF ROC	19,722,488
Discharge of WBF and cuttings	87,462,923
Discharge of OBF	0
Total NSPS 2 Loadings	107,185,411
BAT/NSPS Option 3—Zero Discharge.	
Discharge of SBF	0
Discharge of WBF and cuttings	100,387,607
Discharge of OBF	0
Total NSPS 3 Loadings	100,387,607
Incremental Technology Option Loadings (Reductions):	
BAT/NSPS Option 1: Discharge with 4.03% retention of SBF on cuttings	(2,604,704)
BAT/NSPS Option 2: Discharge with 3.82% retention of SBF on cuttings	(3,123,322)
BAT/NSPS Option 3: Zero Discharge of SBF-wastes via land disposal or onsite injection	(9,921,126)

NOTE: EPA estimates the following GOM WBF/OBF/SBF new sources: Baseline—38/2/20; BAT/NSPS Option 1 & 2—35/1/24; and BAT/NSPS Option 3—42/15/3. EPA estimates no new sources for Offshore California or Cook Inlet, AK.

NOTE: The following terms are used in this table: long-term average (LTA) and retention on cuttings (ROC).

VII. Economic Impacts of Final Regulation

EPA evaluated the economic effects of the options considered for today's regulation. The methodology and results are presented in detail in the SBF Economic Analysis (EPA–821–B–00–012). The following discussion presents a summary of that analysis and its conclusions. Small business impacts are summarized below and in Section IX.B. Environmental justice issues are summarized in Section IV.C.

A. Impacts Analysis

EPA examined the potential impacts of the rule several ways: effects on drilling well costs, changes to financial performance of drilling facilities and production, impacts on small firms, and secondary impacts. The economic methodology used to examine potential impacts on drilling well costs, firms, and secondary impacts is the same as that used for the February 1999 proposal (*see* 64 FR 5521–5527; February 1999 proposal Economic Analysis (EPA–821–B–98–020)).

In response to comments and new data, EPA developed a series of economic models for existing and new deep water projects in the Gulf of Mexico similar to those used for the Offshore and Coastal rules (*see* 58 FR 12454–12512 and 61 FR 66086–66130). This additional analysis is discussed in the April 2000 NODA (65 FR 21558). The models focus on the deep water Gulf because it is the region with the highest level of current drilling with and future interest in drilling with SBFs. The economic models are based on a cash flow approach. Revenues are based on an assumed price of oil, current and projected production of oil and gas, well production decline rates, and royalty rates. Operating costs are based on an assumed cost per BOE produced. The models are based on data from MMS and industry (*see* Summary of Data to be Used In Economic Modeling for more details on the methodology, data, and parameters on which the models are based and how the models were constructed (Docket No. W–98–26, Section III.G of the Rulemaking Record)) and SBF Economic Analysis, Appendix A. EPA received no comments on this NODA with respect to the economic methodology or the data.

The costs and revenues are compared yearly and the project is assumed to run for 30 years or to shut in when operating costs exceed revenues. That is, the economic models have differing lifetimes according to project characteristics and each model may have a shortened lifetime as a result of incremental costs. The model then calculates the lifetime of the project, total production, and the net present value of the operation (net income of the operation over the life of the project in terms of today's dollars), which includes the net operating earnings, taxes, expenditures on drilling, other capital expenditures, etc. A positive net present value means that the project is a good investment. In these cases, the return is greater than the discount rate,

which represents the opportunity cost of capital. If the net present value is negative, it means that money would have been better invested elsewhere. For existing projects, the model uses current operations; all expenditures in prior years, such as exploration, delineation, and infrastructure development costs are considered sunk costs and are not addressed. For new projects, the model uses data and parameters about timing of the various phases of exploration, delineation and development, along with cost estimates about costs incurred during these phases to compute a full lifetime financial model of these projects.

Each model is run twice—with and without the change due to pollution control. The models support changes in both directions—*i.e.,* costs or savings. If a model shows the net present value of a project to be positive in the baseline, but would have a negative net present value under any of the regulatory options, some or all of the wells would not be drilled. This difference between baseline and postcompliance would generate production impacts.

The likely outcome of today's rule is an overall savings associated with the ability to discharge SBF cuttings (*see* Section VI.A). The cost model (which provides the input to the economic models) projects that the savings exceed any incremental costs of compliance in the aggregate. EPA does not expect the alternate higher ROC limitation and standard for drilling fluids with the stock base fluid performance of esters to affect costs. EPA expects that operators will likely use ester-based SBFs for the increased flexibility and not for any economic benefits. The results of the economic models indicate no adverse impacts on drilling well costs (exploratory or developmental), project lifetime, or production for both BAT and NSPS projects. There are no adverse impacts on firms, employment, trade, or inflation.

B. Small Business Analysis

Although today's rule will not have a significant economic impact on a substantial number of small entities (*see* Section VII.A), EPA assessed the impacts of the rule on small businesses. The small business analysis is described more fully in Chapter 6 of the SBF Economic Analysis.

The small business definitions and the methodology were outlined in the April 2000 NODA and the February 1999 Proposal Economic Analysis and have not changed. Briefly, EPA relied on the Small Business Administration's size standards to determine whether a firm is a small business. If EPA could not find employment or revenue data to confirm a firm's size, it was classified as ''potentially'' small. EPA identified 40 small and potentially small firms. As noted in the previous paragraph, today's rule results in cost savings, and EPA projects no adverse impacts on small businesses.

VIII. Water Quality and Non-Water Quality Environmental Impacts of Final Regulation

A. Overview of Water Quality and Non-Water Quality Environmental Impacts

EPA conducted various analyses to assess the impact of the final regulation on water quality, sediment quality, and human health. In general, EPA has found that no adverse impacts are expected from controlled discharges of SBFs.

B. Water Quality Modeling

In order to assess the impacts of potential SBF discharges to the receiving waters, EPA conducted pore water, water column, and sediment guidelines analyses. EPA calculated pollutant concentrations for both the water column and pore water and compared them to the respective EPA recommended marine water quality criteria or to applicable state standards to determine the nature and magnitude of any projected water quality exceedances. Details of the analyses and results are presented in the final SBF Environmental Assessment.

EPA included the discharge of WBFs in the engineering analyses (*see* Section II.A). Environmental impacts such as water column, pore water, fish tissue and human health risk analyses were not estimated for the discharge of WBFs versus the use and discharge of SBF cuttings. However, industry has provided information that drilling is significantly more efficient using SBFs rather than WBFs because hole volumes with SBFs are approximately 1.8 times smaller. Therefore, the pollutant loadings of appropriately controlled SBF discharge are less than pollutant loadings associated with controlled WBF discharge.

1. Water Column Water Quality Analyses

There are no water quality criteria exceedances in the water column for any of the regulatory options being considered including the ROC option based on data from all four cuttings dryer technologies for drilling fluids with the sediment toxicity and biodegradation characteristics of ester-based SBFs which results in a slightly higher LTA. Also, no Alaska state water quality standards are exceeded under the discharge options in Cook Inlet, Alaska.

2. Pore Water Quality Analyses

As described above in Section III.D.1, the addition of several seabed survey data changed the estimated SBF sediment concentration at 100 meters (328 feet) as used in the pore water quality analyses. The revised analyses estimate that baseline (or BPT) pore water pollutant concentrations at 100 meters from the discharge exceed recommended water quality criteria for the heavy metal, chromium, for two model well types, shallow water exploratory and deep water exploratory. There are no pore water exceedances of any of the Alaska state water quality standards for potential Cook Inlet, Alaska discharges. Also, there are no pore water exceedances under the controlled SBF discharges (*i.e.,* BAT/NSPS Options 1 and 2) including the ROC option based on data from all four cuttings dryer technologies for drilling fluids with the sediment toxicity and biodegradation characteristics of ester-based SBFs which results in a slightly higher LTA.

3. Sediment Guidelines Analyses

The EPA proposed sediment guidelines for the protection of benthic organisms assesses potential benthic impacts of certain metals. The revised analyses, based on revised pore water concentrations, result in 2 exceedances only under the baseline (or BPT) conditions. There are no sediment guidelines exceedances under controlled SBF discharge conditions (*i.e.,* BAT/NSPS Options 1 and 2) including the ROC option based on data from all four cuttings dryer technologies for drilling fluids with the sediment toxicity and biodegradation characteristics of ester-based SBFs which results in a slightly higher LTA.

C. Human Health Effects Modeling

The human health risk analyses were revised to incorporate changes to the fish consumption rates (*see* Section III.D.b). The revised analyses show no risk to human health.

D. Seabed Surveys

EPA reviewed the seabed surveys submitted during public comment to the April 2000 NODA. As previously stated, EPA used data from two surveys drilling six wells with SBFs in the environmental assessment analyses. Additionally, EPA also received information on the on-going joint Industry/MMS GOM seabed survey. The Industry/MMS workgroup has

completed the first two cruises of the four cruise study (*see* Section III.D.1). Outside of a 50–100′ radius from the drilling facility, no visible cuttings accumulations (large or small) were detected at any of the drilling facility survey sites.

E. Energy Impacts

As described in Sections III.E and IV.E, EPA included additional data and revised several parameters in estimating energy impacts of the final SBF rule. EPA estimated the amount of fuel required, expressed as barrels of oil equivalents per year (BOE/yr), to operate the equipment associated with each of the regulatory options as well as the fuel consumed by daily rig operations. EPA also estimated the current energy requirements of WBF discharge in order to determine the relative decrease in impacts of SBF versus WBF use. EPA does not expect the alternate higher ROC limitation and standard for drilling fluids with the stock base fluid performance of esters to affect energy impacts because equipment used under the ester option (*e.g.,* shale shakers, cuttings dryer, fines removal unit) has the same or similar energy requirements. The results of the energy impact analysis are presented in Tables 6 and 7 for existing and new sources, respectively.

TABLE 6.—INCREMENTAL SUMMARY ANNUAL ENERGY IMPACTS, EXISTING SOURCES

Technology basis	Energy impacts: Reductions (Increases)[a] fuel use (BOE/yr)			
	Gulf of Mexico	Offshore California	Cook Inlet, AK	Total
BAT/NSPS Option 1: Discharge with LTA of 4.03% SBF ROC	202,146	0	19	202,165
BAT/NSPS Option 2: Discharge with LTA of 3.82% SBF ROC	195,124	0	0	195,124
BAT/NSPS Option 3: Zero Discharge of SBF-wastes via land disposal or onsite injection	(346,459)	(6,138)	(6,067)	(358,664)

[a] Annual fuel usage reductions or increases are incremental to baseline/current practice (*i.e.,* discharge of SBF-cuttings at 10.2% ROC in the GOM and zero discharge in Offshore California and Cook Inlet, AK).

Note: BOE = Barrels of Oil Equivalent.

Note: The following terms are used in this table: long-term average (LTA) and retention on cuttings (ROC).

TABLE 7.—INCREMENTAL SUMMARY ANNUAL ENERGY IMPACTS, NEW SOURCES

Technology basis	Energy impacts: Reductions (increases)[a] fuel use (BOE/yr)
BAT/NSPS Option 1: Discharge with LTA of 4.03% SBF ROC	6330
BAT/NSPS Option 2: Discharge with LTA of 3.82% SBF ROC	5693
BAT/NSPS Option 3: Zero Discharge of SBF-wastes via land disposal or onsite injection	(18,067)

[a] Annual fuel usage reductions or increases are incremental to baseline/current practice (*i.e.,* discharge of SBF-currings at 10.2% ROC in the GOM).

Note: BOE = Barrels of Oil Equivalent.

Note: The following terms are used in this table: long-term average (LTA) and retention on cuttings (ROC).

Note: EPA estimates no new sources for Offshore California or Cook Inlet, AK.

F. Air Emission Impacts

EPA calculated the air emissions, expressed as short tons per year, resulting from activities associated with each of the regulatory options. Air emissions are a function of the: (1) Type of fuel burned (*e.g.,* natural gas or diesel); and (2) amount of fuel consumed as determined from the length of equipment operation and the fuel consumption rate. The methodology and modeling parameters parallel that of the energy impact analysis as the amount of fuel consumed is the basis for the air emissions analysis. Therefore, the air emissions analysis includes the estimate of emissions of daily rig operations and an estimate of WBF drilling operation air emissions. EPA does not expect the alternate higher ROC limitation and standard for drilling fluids with the stock base fluid performance of esters to affect air emissions because equipment used under the ester option (*e.g.,* shale shakers, cuttings dryer, fines removal unit) has the same or similar air emissions. The results of the air emission analysis are presented in Tables 8 and 9 for existing and new sources, respectively.

TABLE 8.—INCREMENTAL SUMMARY ANNUAL AIR EMISSIONS, EXISTING SOURCES

Technology basis	Annual Air Emission Reductions (Increases) [a] (tons/yr)			
	Gulf of Mexico	Offshore California	Cook Inlet, AK	Total
BAT/NSPS Option 1: Discharge with LTA of 4.03% SBF ROC	3,172	0	0	3,172
BAT/NSPS Option 2: Discharge with LTA of 3.82% SBF ROC	3,074	0	(1)	3,073
BAT/NSPS Option 3: Zero Discharge of SBF-wastes via land disposal or onsite injection	(5,414)	(94)	(94)	(5,602)

[a] Annual air emissions reductions or increases are incremental to baseline/current practice (i.e., discharge of SBF-cuttings at 10.2% ROC in the GOM and zero discharge in Offshore California and Cook Inlet, AK).

Note: 1 ton = 2000 lbs.

Note: The following terms are used in this table: long-term average (LTA) and retention cuttings (ROC).

TABLE 9.—INCREMENTAL SUMMARY AIR EMISSIONS, NEW SOURCES—GULF OF MEXICO

Technology basis	Annual air emissions reduction (increases) [a] (tons/yr)
BAT/NSPS Option 1: Discharge with LTA of 4.03% SBF ROC	(136)
BAT/NSPS Option 2: Discharge with LTA of 3.82% SBF ROC	(145)
BAT/NSPS Option 3: Zero Discharge of SBF-wastes via land disposal or onsite injection	(528)

[a] Annual air emissions reductions or increases are incremental to baseline/current practice (i.e., discharge of SBF-cuttings at 10.2% ROC in the GOM).

Note: 1 ton = 2000 lbs.
Note: The following terms are used in this table: long-term average (LTA) and retention on cuttings (ROC).
Note: EPA estimates no new sources for Offshore California or Cook Inlet, AK.

G. Air Emissions Monetized Human Health Benefits

EPA estimated emissions associated with each of the regulatory options as part of the NWQI analyses. The pollutants considered in the NWQI analyses are nitrogen oxides (NO_X), volatile organic carbon (VOC), particulate matter (PM), sulfur dioxide (SO_2), and carbon monoxide (CO). Of these pollutants, EPA monetized the human health benefits or impacts associated with VOC, PM, and SO_2 emissions using the methodology presented in the Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Industry (EPA–821–B–98–008). Each of these pollutants have human health impacts and reducing these emissions can reduce these impacts.

Several VOCs exhibit carcinogenic and systemic effects and VOCs, in general, are precursors to ground-level ozone, which negatively affects human health and the environment. PM impacts include aggravation of respiratory and cardiovascular disease and altered respiratory tract defense mechanisms. SO_2 impacts include nasal irritation and breathing difficulties in humans and acid deposition in aquatic and terrestrial ecosystems.

The unit values (in 1990 dollars) are $489 to $2,212 per megagram (Mg) of VOC; $10,823 per Mg of PM; and $3,516 to $4,194 per Mg of SO_2. Using the Engineering News Record Construction Cost Index (*see* www.enr.com/cost/costcci.asp) these conversion factors are scaled up using the ratio of 6060:4732 (1999$:1990$). EPA does not expect the alternate higher ROC limitation and standard for drilling fluids with the stock base fluid performance of esters to affect monetized benefits because equipment used under the ester option (*e.g.,* shale shakers, cuttings dryer, fines removal unit) has the same or similar air emissions. Following is a summary of the monetized benefits for each of the regulatory options for both existing and new sources.

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Table 10: Summary of Monetized Human Health Benefits or Impacts Associated with VOC, PM, and SO_2 Emissions, Existing Sources (1999$/yr)

	Criteria Air Pollutant		
	VOC	**PM**	**SO_2**
Baseline/Current Practice Air Emissions, Mg/yr:			
Discharge with 10.2% retention of SBF on cuttings	23,635	3,460	3,006
Zero Discharge (current OBF wells only)	847	126	109
Total Baseline Air Emissions, Mg/yr	24,482	3,586	3,115
Compliance Air Emissions, Mg/yr:			
(1) Discharge with 4.03% retention of SBF on cuttings	21,960	3,222	2,799
(2) Discharge with 3.82% retention of SBF on cuttings	21,980	3,226	2,803
(3) Zero Discharge [a]	24,919	3,654	3,175
Incremental Compliance Emission Reductions (Increases), Mg/yr:			
(1) Discharge with 4.03% retention of SBF on cuttings	2,522	364	316
(2) Discharge with 3.82% retention of SBF on cuttings	2,502	360	312
(3) Zero Discharge [a]	(437)	(68)	(59)
Unit Value of Poll. Reductions, 1990$/Mg: [b]	489 to 2,212	10,823	3,516 to 4,194
Unit Value of Poll. Reductions, 1999$/Mg: [c]	626 to 2,833	13,860	4,503 to 5,371
Incremental Compliance Benefits (Costs), 1998$/yr:			
(1) Discharge with 4.03% retention of SBF on cuttings	1,579,429 to 7,144,576	5,049,778	1,423,174 to 1,697,608
(2) Discharge with 3.82% retention of SBF on cuttings	1,566,817 to 7,087,524	4,991,937	1,406,834 to 1,678,118
(3) Zero Discharge [a]	(273,777) to (1,238,434)	(948,091)	(267,560) to (319,154)

[a] via land disposal or on-site offshore injection

[b] conversion factors from *Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Industry* (EPA-821-B-98-008)

[c] scaled from 1990$ using the Engineering News Record Construction Cost Index

Table 11: Summary of Monetized Human Health Benefits or Impacts Associated with VOC, PM, and SO_2 Emissions, New Sources (1999$/yr)

	Criteria Air Pollutant		
	VOC	PM	SO_2
Baseline/Current Industry Practice Air Emissions, Mg/yr:			
Discharge with 10.2% retention of SBF on cuttings	589	86	75
Compliance Air Emissions, Mg/yr:			
(1) Discharge with 4.03% retention of SBF on cuttings	813	119	104
(2) Discharge with 3.82% retention of SBF on cuttings	913	134	117
(3) Zero Discharge [a]	998	146	127
Incremental Compliance Emission Reductions (Increases), Mg/yr:			
(1) Discharge with 4.03% retention of SBF on cuttings	(224)	(33)	(29)
(2) Discharge with 3.82% retention of SBF on cuttings	(323)	(48)	(41)
(3) Zero Discharge [a]	(409)	(60)	(52)
Unit Value of Poll. Reductions, 1990$/Mg: [b]	489 to 2,212	10,823	3,516 to 4,194
Unit Value of Poll. Reductions, 1999$/Mg: [c]	626 to 2,833	13,860	4,503 to 5,371
Incremental Compliance Benefits (Costs), 1998$/yr:			
(1) Discharge with 4.03% retention of SBF on cuttings	(140,269) to (634,508)	(453,927)	(128,265) to (152,999)
(2) Discharge with 3.82% retention of SBF on cuttings	(202,421) to (915,655)	(658,885)	(186,271) to (222,190)
(3) Zero Discharge [a]	(256,052) to (1,158,253)	(831,151)	(234,472) to (279,686)

[a] via land disposal or on-site offshore injection

[b] conversion factors from *Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Industry* (EPA-821-B-98-008)

[c] scaled from 1990$ using the Engineering News Record Construction Cost Index

H. Solid Waste Impacts

EPA calculated the amount of waste cuttings that would be land disposed, injected onshore, and/or injected onsite in each regulatory scenario, and determined that there would be a considerable reduction in the amount of drill cuttings land disposed and injected with the implementation of a controlled discharge option for SBF-cuttings.

EPA's analyses show that under the SBF-cuttings zero discharge option as compared to current practice, for U.S. Offshore waters existing sources, there would be an annual increase of 35 million pounds of cuttings shipped to shore for disposal in non-hazardous oilfield waste (NOW) sites and an increase of 166 million pounds of cuttings injected. In addition, under the SBF-cuttings zero discharge option, operators would use the more toxic OBFs. The zero discharge option for SBF-cuttings would lead to an increase in annual fuel usage of 358,664 BOE and an increase in annual air emissions of 5,602 tons. Finally, the SBF-cuttings zero discharge option in the U.S. Offshore waters would lead to an increase of 51 million pounds of WBF cuttings being discharged to U.S. Offshore waters. This pollutant loading increase is a result of GOM operators switching from efficient SBF drilling to less efficient WBF drilling.

Additionally, EPA's analyses show that under the SBF-cuttings zero discharge option as compared to current practice, for GOM new sources, there would be an annual increase of 3.4 million pounds of drill cuttings shipped to shore for disposal in NOW sites and an increase of 10.2 million pounds of drill cuttings injected. These zero discharge options for SBF-cuttings would lead to an increase in annual fuel use of 18,067 BOE and an increase in annual air emissions of 528 tons. Finally, the SBF-cuttings zero discharge option in the GOM would lead to an increase of 7.5 million pounds of WBF-cuttings being discharged to U.S. Offshore waters. Again, this pollutant loading increase is a result of GOM operators switching from efficient SBF drilling to less efficient WBF drilling.

I. Other Factors

EPA also considered the impact of the effluent limitations guidelines and

standards on safety. EPA has identified two safety issues related to drilling fluids: (1) Deleterious vapors generated by organic materials in drilling fluids; and (2) waste hauling activities that increase the risk of injury to workers.

1. Vapors Generated by Organic Materials in Drilling Fluids

One of the key concerns in exploration and production projects is the exposure of wellsite personnel to vapors generated by organic materials in drilling fluids (Docket No. W–98–26, Record No. III.D.12). Areas on the drilling location with the highest exposure potentials are sites near solids control and open pits. These areas are often enclosed in rooms and ventilated to prevent unhealthy levels of vapors from accumulating. If the total volume of organic vapors can be reduced then any potential health effects will also be reduced regardless of the nature of the vapors.

Generally speaking the aromatic fraction of the vapors is the most toxic to the mammalian system. The high volatility and absorbability through the lungs combined with their high lipid solubility serve to increase their toxicity. OBFs have a high aromatic content and vapors generated from using these drilling fluids include aromatics (*e.g.,* alkybenzenes, naphthalenes, and alkyl-naphthalenes), alkanes (*e.g.,* C_7–C_{18} straight chained and branched), and alkenes. Some minerals oils also generate vapors that contain the same types of chemical compounds, but generally at lower concentrations, as those found in the diesel vapors (*e.g.,* aromatics, alkanes, cyclic alkanes, and alkenes). Because SBF are manufactured from compounds with specifically defined compositions, the subsequent compound can exclude toxic aromatics. Consequently, toxic aromatics can be excluded from the vapors generated by using SBFs.

In general, SBFs (*e.g.,* esters, LAOs, PAOs, IOs) generate much lower concentrations of vapors than do OBFs (Docket No. W–98–26, Record No. III.D.12). Moreover, the vapors generated by these SBFs are less toxic than traditional OBFs because they do not contain aromatics.

2. Waste Hauling Activities

Industry has commented in previous effluent guidelines, such as the Coastal Subcategory Oil and Gas Extraction and Development ELG, that a zero discharge requirement would increase the risk of injury to workers due to increased waste hauling activities. These activities include vessel trips to and from the drilling facility to haul waste, transfer of waste from the drilling facility onto a service vessel, and transfer in port onto a barge or dock.

EPA has identified and reviewed additional data sources to determine the likelihood that imposition of a zero discharge limitation on cuttings contaminated with SBF could increase risk of injury due to additional waste hauling demands. The sources of safety data are the U.S. Coast Guard (USCG), the Minerals Management Service (MMS), the American Petroleum Institute (API), and the Offshore Marine Service Association (OMSA). The following is a summary of the findings from this review.

The data indicate that there are reported incidents that are associated with the collection, hauling, and onshore disposal of wastes from offshore. However, the data do not distinguish whether any of these incidents can be attributed to specific waste management activities.

Most offshore incidents are due to human error or equipment failure. The rate at which these incidents occur will not be changed significantly by increased waste management activities. However, if the number of man hours and/or equipment hours are increased, there will be more reportable incidents given an unchanged incident rate. These potential increases may be offset by reduced incident rates through increased training or equipment maintenance and inspection; but these changes cannot be predicted. One indication that training and maintenance can reduce incident rates is a 1998 API report entitled ''1997 Summary of U.S. Occupational Injuries, Illnesses, and Fatalities in the Petroleum Industry,'' which established that injury incident rates have been decreasing over the last 14 years. If this decrease continues, there should be no increase in the number of safety incidents due to a requirement to haul SBF-contaminated cuttings to shore for disposal. The details of this analysis are available in a technical support document in the rule record for today's final rule.

IX. Regulatory Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business with fewer than 500 employees for oil and gas production operators and less than $5 million per year in revenues for oil and gas services providers (*i.e.,* the definitions from SBA's size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impact of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's rule affects small businesses only; there are no impacts on small governmental jurisdictions or small organizations.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities. Since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimizes any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA projects that today's rule will result in operational savings and will have no adverse economic impacts. These conclusions apply to all firms, both large and small. EPA estimates that between five and 40 small businesses (between five and 40% of all firms) are covered by today's rule. If the small businesses are using SBF and continue to do so, or if they switch to SBF, they need to comply with today's effluent limitations. EPA estimates that the operational savings associated with an allowable SBF-cuttings discharge will result in an economic advantage, contrasted to other SBF-cuttings regulatory scenarios. EPA selected the controlled discharge option which will allow operators to use of SBF in place of OBF and WBFs. Using SBFs in place of OBFs will generally shorten the length of the drilling project and eliminate the need to barge to shore or re-inject OBF-waste cuttings, thereby reducing costs and NWQI such as fuel use, air emissions, and land disposal of OBFs. Use of SBFs in place of WBFs would also lead to: (1) a decrease in costs and NWQIs due to the decreased length of the drilling project; and (2) a per well decrease of pollutants discharged due to improved technical performance of SBFs. EPA estimates that the rule will result in annual savings of $48.9 million and no adverse economic impacts to the industry as a whole. Further, after considerable study, EPA's record indicates that there will be no significant economic impacts to any small entity subject to the rule. The SBF Economic Analysis describes these results in more detail. We have therefore conducted that today's final rule will relieve regulatory burden for all small entities.

C. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 21, 2001.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0230.

The information collection requirements are related to the optional use of Best Management Practices (BMPs) in order to reduce SBF-cuttings monitoring. Operators that elect to not use the BMP alternative are not subject to the information collection requirements in today's final rule. BMPs are inherently pollution prevention practices. BMPs may include the universe of pollution prevention encompassing production modifications, operational changes, material substitution, materials and water conservation, and other such measures. BMPs include methods to prevent toxic and hazardous pollutants from reaching receiving waters. Because BMPs are most effective when organized into a comprehensive facility BMP Plan, EPA is requiring operators to complete a BMP Plan when they select the BMP alternative.

The BMP alternative requires operators to develop and, when appropriate, amend plans specifying how operators will implement the specified BMP alternative, and to certify to the permitting authority that they have done so in accordance with good engineering practices and the requirements of the regulation. The purpose of those provisions is, respectively, to facilitate the implementation of BMP alternative on a site-specific basis and to help the regulating authorities to ensure compliance without requiring the submission of actual BMP Plans. Finally, the recordkeeping provisions are intended to facilitate training, to signal the need for different or more vigorously implemented BMPs, and to facilitate compliance assessment.

The information collection requirements in the final rule include, for example: (1) Training personnel; (2) analyzing spills that occur; (3) identifying equipment items that might need to be maintained, upgraded, or repaired; (4) identifying procedures for waste minimization; (5) performing monitoring (including the operation of monitoring systems) to establish equivalence with a numeric cuttings retention limitation and to detect leaks, spills, and intentional diversion; and (6) generally to periodically evaluate the effectiveness of the BMP alternatives.

EPA does not expect that any confidential business information or trade secrets will be required from oil and gas extraction operators as part of this ICR. If information submitted in conjunction with this ICR were to contain confidential business information, the respondent has the authority to request that the information be treated as confidential business information. All data so designated will be handled by EPA pursuant to 40 CFR part 2. This information will be maintained according to procedures outlined in EPA's Security Manual Part III, Chapter 9, dated August 9, 1976. Pursuant to section 308(b) of the CWA, effluent data may not be treated as confidential.

EPA estimated the burden and costs to the regulated community (approximately 67 SBF well drilling facilities annually) and EPA, the NPDES permit control authority, for data collection and record keeping associated with implementation of the BMP alternative. EPA estimates the public reporting burden for the selected BMP option as 787 hours per respondent per year (*i.e.,* (16,750 initial hours/3 years + 47,168 annual hours/year)/67 SBF well operators). EPA also estimated the annual burden for EPA Regions, the NPDES permit controlling authorities, to review BMPs and ensure compliance. EPA estimates that essentially all of the SBF discharges will occur in Federal offshore waters or in Cook Inlet, Alaska, where EPA Region X retains NPDES permit controlling authority. The EPA Regional burden for reviewing BMP Plans is estimated at 380 hours per year (*i.e.,* (536 initial hours/3 years + 201 annual hours/year)).

EPA estimates the public reporting costs as $24,058 per respondent per year (*i.e.,* ($1,235,313 initial costs/3 years + $1,200,138 annual costs/year)/67 SBF well operators). The EPA Regional costs for reviewing BMP Plans is estimated at approximately $12,149 per year (*i.e.,*

($17,152 initial costs/3 years + $6,432 annual costs/year)).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA projects that the effect of the rule will be a operational savings. EPA has estimated this savings at $48.9 million (1999$, post-tax). Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA projects that no small governments will be affected by this rule as small governments are not engaged in oil and gas extraction operations in offshore and coastal waters or in issuing NPDES permits for oil and gas extraction operations in offshore and coastal waters. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

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 nor does it impose substantial direct compliance costs on them. EPA has determined that currently, no communities of Indian tribal governments are affected by this rule as Indian tribal governments are not engaged in oil and gas extraction operations in offshore and coastal waters or in issuing NPDES permits for oil and gas extraction operations in offshore and coastal waters. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule establishes effluent limitations and standards imposing requirements that apply to oil and gas extraction operations in offshore and coastal waters. EPA has determined that there are no oil and gas extraction operations in offshore and coastal waters that are owned and operated by State or local governments. Therefore, this rule will not impose any requirements on State or local governments. Further, the rule will not affect State governments' authority to implement CWA and UIC permitting programs. In fact, the final rule may reduce administrative costs on States that have authorized NPDES programs because although these States must incorporate the new limitations and

standards in new and revised NPDES permits, they no longer will need to make Best Professional Judgement (BPJ) determinations regarding the appropriate level of technology control. We recognize that there may be a small administrative cost to the State of Alaska to assist EPA Region 10 in determining whether Coastal Cook Inlet, Alaska, operators qualify for the SBF-cuttings zero discharge exemption (*see* Section V.F). Thus, Executive Order 13132 does not apply to this rule.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule (64 FR 5528), section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Pub L. 104–113 section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule involves technical standards. The rule requires dischargers to measure for two metals, PAH content (as phenanthrene), sediment toxicity, aqueous toxicity, biodegradation rate, formation oil content, and base fluid retained on cuttings. EPA performed a search to identify potentially applicable voluntary consensus standards that could be used to measure the parameters in today's rule. EPA did locate several voluntary consensus standards that required modification for inclusion in the final rule. EPA considered public comments on the proposed rule and worked with stakeholders, including the industry sponsored Synthetic Based Muds Research Consortium (SBMRC), to modify or develop new standards for various parameters (*i.e.,* sediment toxicity, biodegradation rate, PAH content (as phenanthrene), formation oil content, base fluid retained on cuttings). EPA has decided to use modified versions of the following voluntary consensus standards: (1) EPA Method 1654A; (2) ASTM E–1367–92; (3) ISO 11734:1995; and (4) API Recommended Practice 13B–2. As indicated by industry comments on the February 1999 proposal and April 2000 NODA, industry stakeholders support the use of these modified voluntary consensus standards (*see* Docket No. W–98–26, Record No. IV.A.a.13).

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not ''economically significant'' as defined under Executive Order 12866, and because the rule does not concern an environmental health or safety risk that may have a disproportionate effect on children.

J. Executive Order 13158: Marine Protected Areas

Executive Order 13158 (65 FR 34909, May 31, 2000) requires EPA to ''expeditiously propose new science-based regulations, as necessary, to ensure appropriate levels of protection for the marine environment.'' EPA may take action to enhance or expand protection of existing marine protected areas and to establish or recommend, as appropriate, new marine protected areas. The purpose of the executive order is to protect the significant natural and cultural resources within the marine environment, which means ''those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law.''

EPA believes that this final rule is consistent with the objectives of the Executive Order to protect the ocean environment. By encouraging the use of appropriately controlled SBFs in the place of more toxic OBFs, the ocean will be protected from the effects of spills of OBFs and from the effects of disposal of OBFs onshore. By encouraging the use of appropriately controlled SBFs over WBFs, there will much less drilling waste generated and discharged to the ocean per well and the drilling waste discharged will be far less toxic and will biodegrade at a much faster rate than those of traditional drilling fluids.

X. Regulatory Implementation

Upon promulgation of these regulations, the effluent limitations for the appropriate subcategory must be applied in all Federal and State NPDES permits issued to affected direct dischargers in the oil and gas extraction industry. This section discusses the relationship of upset and bypass provisions, variances and modifications, and monitoring requirements.

A. Implementation of Limitations and Standards

Upon the promulgation of these regulations, all new and reissued Federal and State NPDES permits issued to direct dischargers in the oil and gas extraction industry must include the effluent limitations for the appropriate subcategory. Permit writers should be aware that EPA has now finalized revisions to 40 CFR 122.44(a) which could be particularly relevant to the development of NPDES permits for the oil and gas extraction point source category (*see* 65 FR 30989, May 15, 2000). As finalized, the revision would require that permits have limitations for all applicable guidelines-listed pollutants but allows for the waiver of sampling requirements for guideline-listed pollutants on a case-by-case basis if the discharger can certify that the pollutant is not present in the discharge or present in only background levels from intake water with no increase due to the activities of the dischargers. New sources and new dischargers are not eligible for this waiver for their first permit term, and monitoring can be re-established through a minor modification if the discharger expands or changes its process. Further, the permittee must notify the permit writer of any modifications that have taken place over the course of the permit term and, if necessary, monitoring can be reestablished through a minor modification.

B. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of waste streams from any portion of a treatment facility. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n), and 40 CFR 403.16 (upset) and 403.17

(bypass). The reader is also referred to the Offshore Guidelines (58 FR 12501) for a discussion on upset and bypass provisions.

C. Variances and Modifications

The CWA requires application of the effluent limitations and standards established pursuant to section 301, 304, 306, or the pretreatment standards of section 307 to all direct and indirect dischargers. However, section 301(n) provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants (*e.g.,* fundamentally different factor variances, removal credits).

The Fundamentally Different Factors (FDF) variances considers those facility specific factors which a permittee may consider to be uniquely different from those considered in the formulation of an effluent limitations guidelines as to make the limitation inapplicable. An FDF variance must be based only on information submitted to EPA during the rulemaking establishing the effluent limitations guidelines from which the variance is being requested, or on information the applicant did not have a reasonable opportunity to submit during the rulemaking process for these effluent limitations guidelines. FDF variance requests must be received by the permitting authority within 180 days of publication of the final rule. The specific regulations covering the requirements for the administration of FDF variances are found at 40 CFR 122.21(m)(1), and 40 CFR part 125, subpart D.

D. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by EPA or authorized States under section 402 of the Act.

The Agency has developed the limitations for this regulation to cover the discharge of pollutants for this industrial category. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this regulation. In addition, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in a NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to ensure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to the extent consistent with EPA's regulations.

An important component of the monitoring requirements established by the permitting authority is the frequency at which monitoring is required. In costing the various technology options for the oil and gas extraction industry, EPA assumed yearly SBF stock limitations monitoring for mercury, cadmium, PAH (as phenanthrene), sediment toxicity, and biodegradation rates and daily or monthly monitoring for diesel oil contamination, formation oil contamination, base fluid retained on cuttings, aqueous toxicity, and sediment toxicity. These monitoring frequencies may be lower than those generally imposed by some permitting authorities, but EPA believes these reduced frequencies are appropriate due to the relative costs of monitoring when compared to the estimated costs of complying with the promulgated limitations.

E. Analytical Methods

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test procedures for the analysis of pollutants. These test procedures (methods) are used to determine the presence and concentration of pollutants in wastewater, and are used for compliance monitoring and for filing applications for the NPDES program under 40 CFR 122.21, 122.41, 122.44 and 123.25, and for the implementation of the pretreatment standards under 40 CFR 403.10 and 403.12. To date, EPA has promulgated methods for conventional pollutants, toxic pollutants, and for some non-conventional pollutants. The five conventional pollutants are defined at 40 CFR 401.16. Table I–B at 40 CFR part 136 lists the analytical methods approved for these pollutants. The 65 toxic metals and organic pollutants and classes of pollutants are defined at 40 CFR 401.15. From the list of 65 classes of toxic pollutants EPA identified a list of 126 ''Priority Pollutants.'' This list of Priority Pollutants is shown, for example, at 40 CFR part 423, Appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants.

Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR 136.3, Table I–B. Table I–C at 40 CFR 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants. Dischargers must use the test methods promulgated at 40 CFR 136.3 or incorporated by reference in the tables, when available, to monitor pollutant discharges from the oil and gas industry, unless specified otherwise in part 435 or by the permitting authority.

As part this rule, EPA is promulgating the use of analytical methods for determining additional parameters that are specific to characterizing SBFs and other drilling fluids which do not disperse in water. These additional stock base fluid parameters include PAH content (as phenanthrene), sediment toxicity, and biodegradation rate. Additional discharge limitations include prohibition of diesel oil discharge, formation (crude) oil contamination, aqueous phase toxicity, sediment toxicity, and quantity of drilling fluid discharged with cuttings.

EPA worked with stakeholders to identify methods for determining these parameters. For PAH content (as phenanthrene), EPA is promulgating the use of EPA Method 1654A. For biodegradation rate, EPA is promulgating the use of the anaerobic closed bottle biodegradation test (*i.e.*, ISO 11734:1995) as modified for the marine environment (*i.e.,* Appendix 4 of subpart A of 40 CFR part 435). For base fluid sediment toxicity, EPA is promulgating the use of the American Society for Testing and Material (ASTM) Method E–1367–92 supplemented with sediment preparation procedures (*i.e.*, Appendix 3 of subpart A of 40 CFR part 435). For drilling fluid sediment toxicity, EPA is promulgating the use of ASTM Method E–1367–92 supplemented with sediment preparation procedures (*i.e.*, Appendix 3 of subpart A of 40 CFR part 435) and reference drilling fluid preparation procedures (*i.e.*, Appendix 8 of subpart

A of 40 CFR part 435). For aqueous toxicity, EPA is promulgating the use of the Suspended Particulate Phase (SPP) toxicity test (Appendix 2 of subpart A of 40 CFR part 435). For formation (crude) oil contamination in drilling fluid, EPA is promulgating the use of two methods: a reverse phase extraction fluorescence test (RPE) and a gas chromatography/mass spectrometry (GC/MS) test. The RPE test (*i.e.,* Appendix 6 of subpart A of 40 CFR part 435) is a screening method that provides a quick and inexpensive determination of oil contamination for use on offshore well drilling sites, while the GC/MS test (*i.e.,* Appendix 5 of subpart A of 40 CFR part 435) provides: (1) A definitive identification and quantification of oil contamination for baseline analysis; and (2) confirmatory results for the RPE when the RPE results need confirmation. For determining the quantity of drilling fluid discharged with cuttings, EPA is promulgating the use of the American Petroleum Institute (API) Retort Method (Recommended Practice 13B–2) with sampling procedures (*i.e.,* Appendix 7 of subpart A of 40 CFR part 435). For determining when Coastal Cook Inlet, Alaska, operators qualify for an exemption from the Coastal requirement of zero discharge for SBF-cuttings, EPA is promulgating the use of the procedure outlined in Appendix 1 of subpart D of 40 CFR part 435.

EPA Method 1654A, ASTM E–1367–92, and ISO 11734:1995 are incorporated by reference into 40 CFR part 435 because they are published methods that are widely available to the public. Modifications to the anaerobic closed bottle biodegradation test (*i.e.,* ISO 11734:1995) are provided in Appendix 4 of subpart A of 40 part 435. The SPP toxicity test is given in Appendix 2 of subpart A of 40 part 435. Supplemental sediment preparation procedures for ASTM E–1367–92 are provided in Appendix 3 of subpart A of 40 CFR part 435. Reference drilling fluid preparation procedures for ASTM E–1367–92 are provided in Appendix 8 of subpart A of 40 CFR part 435. The text of the GC/MS test, RPE test, and the API retort method are provided in Appendices 5–7 of subpart A of 40 CFR part 435. The procedure for determining when Coastal Cook Inlet operators qualify for an exemption from the Coastal requirement of zero discharge for SBF-cuttings is provided in Appendix 1 of subpart D of 40 CFR part 435.

Appendix A to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Preamble

Act—Clean Water Act
Agency—U.S. Environmental Protection Agency
AOGCC—Alaska Oil and Gas Conservation Commission
API—American Petroleum Institute
ANL—Argonne National Laboratory (DOE)
ASTM—American Society of Testing and Materials
BADCT—The best available demonstrated control technology, for new sources under section 306 of the Clean Water Act.
BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Clean Water Act.
bbl—barrel, 42 U.S. gallons
BCT—Best conventional pollutant control technology under section 304(b)(4)(B).
BMP—Best management practices under section 304(e) of the Clean Water Act.
BOD—Biochemical oxygen demand.
BOE—Barrels of oil equivalent
BPJ—Best Professional Judgement
BPT—Best practicable control technology currently available, under section 304(b)(1) of the Clean Water Act.
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act
CFR—U.S. Code of Federal Regulations
Clean Water Act—Federal Water Pollution Control Act Amendments of 1972 as amended (33 U.S.C. 1251 *et seq*)
Conventional pollutants—Constituents of wastewater as determined by section 304(a)(4) of the Act, including, but no limited to, pollutants classified as biochemical oxygen demanding, suspended solids, oil and grease, fecal coliform, and pH
Direct discharger—A facility which discharges or may discharge pollutants to waters of the United States
D&B—Dun & Bradstreet
DOE—U.S. Department of Energy
DWD—Deep-water development model well
DWE—Deep-water exploratory model well
EMO—Enhanced Mineral Oil Drilling Fluid
EPA—U.S. Environmental Protection Agency
FR—Federal Register
GC—Gas Chromatography
GC/FID—Gas Chromatography with Flame Ionization Detection
GC/MS—Gas Chromatography with Mass Spectroscopy Detection
GOM—Gulf of Mexico
Indirect discharger—A facility that introduces wastewater into a publicly owned treatment works.
IRFA—Initial Regulatory Flexibility Analysis
LC_{50} (or LC50)—The concentration of a test material that is lethal to 50% of the test organisms in a bioassay
mg/l—milligrams per liter
MMS—U.S. Department of Interior, Minerals Management Service
NAF—Non-Aqueous Drilling Fluid (includes OBFs, EMOs, and SBFs)
Non-conventional pollutants—Pollutants that have not been designated as either conventional pollutants or priority pollutants
NODA—Notice of Data Availability (65 FR 21548; April 21, 2000)
NOIA—National Ocean Industries Association
NOW—Nonhazardous Oilfield Waste
NPDES—National Pollutant Discharge Elimination System
NRDC—Natural Resources Defense Council, Inc.
NSPS—New source performance standards under section 306 of the Clean Water Act
NTTAA—National Technology Transfer and Advancement Act
NWQI—Non-Water Quality Environmental Impacts
OBF—Oil-Based Drilling Fluid
OCS—Outer Continental Shelf
OMB—Office of Management and Budget
PAH—Polynuclear Aromatic Hydrocarbon
PDC—Polycrystalline Diamond Compact (drill bit)
POTW—Publicly Owned Treatment Works
ppm—parts per million
PPA—Pollution Prevention Act of 1990
Priority pollutants—The 65 pollutants and classes of pollutants declared toxic under section 307(a) of the Clean Water Act
PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Act
PSNS—Pretreatment standards for new sources of indirect discharges, under sections 307(b) and (c) of the Act
RFA—Regulatory Flexibility Act
ROC—Retention on Cuttings
RPE—Reverse Phase Extraction
SBA—U.S. Small Business Administration
SBF—Synthetic Based Drilling Fluid
SBF Development Document—Development Document for Final Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category (EPA–821–B–00–013)
SBF Economic Analysis—Economic Analysis of Final Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category (EPA–821–B–00–012)
SBF Environmental Assessment—Environmental Assessment of Final Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category (EPA–821–B–00–014)
SBF Statistical Support Document—Statistical Analyses Supporting Final Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category (EPA–821–B–00–015)
SBMRC—Synthetic Based Muds Research Consortium
SBREFA—Small Business Regulatory Enforcement Fairness Act
SIC—Standard Industrial Classification
SPP—Suspended Particulate Phase toxicity test (Appendix 2 to Subpart A of 40 CFR 435)

SWD—Shallow-water development model well
SWE—Shallow-water exploratory model well
TSS—Total Suspended Solids
UMRA—Unfunded Mandates Reform Act
UIC—Underground Injection Control programs of the Safe Drinking Water Act of 1974 as amended
U.S.C.—United States Code
WBF—Water-Based Drilling Fluid

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 435

Environmental protection, Non-aqueous drilling fluids, Oil and gas extraction, Pollution prevention, Synthetic based drilling fluids, Waste treatment and disposal, Water non-dispersible drilling fluids, Water pollution control.

Dated: December 28, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in this preamble, 40 CFR parts 9 and 435 are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding entries in numerical order under a new heading titled ''Oil and Gas Extraction Point Source Category'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Oil and Gas Extraction Point Source Category:	
435.13	2040–0230
435.15	2040–0230
435.43	2040–0230
435.45	2040–0230
* * * * *	

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

1. The authority citation for Part 435 is revised to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

Subpart A—Offshore Subcategory

2. Section 435.11 is amended by revising paragraphs (b) through (cc) and by adding paragraphs (dd) through (tt) to read as follows:

§ 435.11 Special definitions.

* * * * *

(b) *Average of daily values for 30 consecutive days* means the average of the daily values obtained during any 30 consecutive day period.

(c) *Base fluid* means the continuous phase or suspending medium of a drilling fluid formulation.

(d) *Base fluid retained on cuttings* as applied to BAT effluent limitations and NSPS refers to the American Petroleum Institute Recommended Practice 13B–2 supplemented with the specifications, sampling methods, and averaging method for retention values provided in Appendix 7 of Subpart A of this part.

(e) *Biodegradation rate* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the ISO 11734:1995 method: ''Water quality—Evaluation of the 'ultimate' anaerobic biodegradability of organic compounds in digested sludge—Method by measurement of the biogas production (1995 edition)'' supplemented with modifications in Appendix 4 of 40 CFR part 435, subpart A. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(f) *Daily values* as applied to produced water effluent limitations and NSPS means the daily measurements used to assess compliance with the maximum for any one day.

(g) *Deck drainage* means any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this Subpart.

(h) *Development facility* means any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(i) *Diesel oil* refers to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975–91, that is typically used as the continuous phase in conventional oil-based drilling fluids. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected at the Office of the **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(j) *Domestic waste* means materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this Subpart.

(k) *Drill cuttings* means the particles generated by drilling into subsurface geologic formations and carried out from the wellbore with the drilling fluid. Examples of drill cuttings include small pieces of rock varying in size and texture from fine silt to gravel. Drill cuttings are generally generated from solids control equipment and settle out and accumulate in quiescent areas in the solids control equipment or other equipment processing drilling fluid (*i.e.,* accumulated solids).

(1) *Wet drill cuttings* means the unaltered drill cuttings and adhering drilling fluid and formation oil carried out from the wellbore with the drilling fluid.

(2) *Dry drill cuttings* means the residue remaining in the retort vessel after completing the retort procedure specified in appendix 7 of subpart A of this part.

(l) *Drilling fluid* means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. Classes of drilling fluids are:

(1) *Water-based drilling fluid* means the continuous phase and suspending

medium for solids is a water-miscible fluid, regardless of the presence of oil.

(2) *Non-aqueous drilling fluid* means the continuous phase and suspending medium for solids is a water-immiscible fluid, such as oleaginous materials (*e.g.,* mineral oil, enhanced mineral oil, paraffinic oil, C_{16}–C_{18} internal olefins, and C_8–C_{16} fatty acid/2-ethylhexyl esters).

(i) *Oil-based* means the continuous phase of the drilling fluid consists of diesel oil, mineral oil, or some other oil, but contains no synthetic material or enhanced mineral oil.

(ii) *Enhanced mineral oil-based* means the continuous phase of the drilling fluid is enhanced mineral oil.

(iii) *Synthetic-based* means the continuous phase of the drilling fluid is a synthetic material or a combination of synthetic materials.

(m) *Enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

(n) *Exploratory facility* means any fixed or mobile structure subject to this Subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(o) *Formation oil* means the oil from a producing formation which is detected in the drilling fluid, as determined by the GC/MS compliance assurance method specified in appendix 5 of subpart A of this part when the drilling fluid is analyzed before being shipped offshore, and as determined by the RPE method specified in appendix 6 of subpart A of this part when the drilling fluid is analyzed at the offshore point of discharge. Detection of formation oil by the RPE method may be confirmed by the GC/MS compliance assurance method, and the results of the GC/MS compliance assurance method shall supercede those of the RPE method.

(p) *M9IM* means those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(q) *M10* means those offshore facilities continuously manned by ten (10) or more persons.

(r) *Maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings means the maximum concentration allowed as measured in any single sample of the barite for determination of cadmium and mercury content.

(s) *Maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water means the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed separately. Alternatively, for BAT and NSPS the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(t) *Maximum weighted mass ratio averaged over all NAF well sections* for BAT effluent limitations and NSPS for base fluid retained on cuttings means the weighted average base fluid retention for all NAF well sections as determined by the API Recommended Practice 13B–2, using the methods and averaging calculations presented in Appendix 7 of subpart A of this part.

(u) *Method 1654A* refers to Method 1654, Revision A, entitled ''PAH Content of Oil by HPLC/UV,'' December 1992, which is published in *Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges,* EPA–821–R–92–008. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Technical Information Service, Springfield, VA 22161, 703–605–6000. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(v) *Minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings means the minimum 96-hour LC_{50} value allowed as measured in any single sample of the discharged waste stream. *Minimum* as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes means the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(w)(1) *New source* means any facility or activity of this subcategory that meets the definition of ''new source'' under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(i) *Water area* as used in ''site'' in 40 CFR 122.29 and 122.2 means the water area and water body floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(ii) *Significant site preparation work* as used in 40 CFR 122.29 means the process of surveying, clearing or preparing an area of the water body floor for the purpose of constructing or placing a development or production facility on or over the site.

(2) ''New Source'' does not include facilities covered by an existing NPDES permit immediately prior to the effective date of these guidelines pending EPA issuance of a new source NPDES permit.

(x) *No discharge of free oil* means that waste streams may not be discharged that contain free oil as evidenced by the monitoring method specified for that particular stream, *e.g.,* deck drainage or miscellaneous discharges cannot be discharged when they would cause a film or sheen upon or discoloration of the surface of the receiving water; drilling fluids or cuttings may not be discharged when they fail the static sheen test defined in Appendix 1 of subpart A of this part.

(y) Parameters that are regulated in this Subpart and listed with approved methods of analysis in Table 1B at 40 CFR 136.3 are defined as follows:

(1) *Cadmium* means total cadmium.

(2) *Chlorine* means total residual chlorine.

(3) *Mercury* means total mercury.

(4) *Oil and Grease* means total recoverable oil and grease.

(z) *PAH (as phenanthrene)* means polynuclear aromatic hydrocarbons reported as phenanthrene.

(aa) *Produced sand* means the slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(bb) *Produced water* means the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(cc) *Production facility* means any fixed or mobile structure subject to this Subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

(dd) *Sanitary waste* means the human body waste discharged from toilets and

urinals located within facilities subject to this Subpart.

(ee) *Sediment toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the ASTM E 1367–92 method: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods,'' 1992, with Leptocheirus plumulosus as the test organism and sediment preparation procedures specified in Appendix 3 of 40 CFR part 435, subpart A. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(ff) *Solids control equipment* means shale shakers, centrifuges, mud cleaners, and other equipment used to separate drill cuttings and/or stock barite solids from drilling fluid recovered from the wellbore.

(gg) *SPP toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the bioassay test procedure presented in Appendix 2 of subpart A of this part.

(hh) *Static sheen test* means the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in Appendix 1 of subpart A of this part.

(ii) *Stock barite* means the barite that was used to formulate a drilling fluid.

(jj) *Stock base fluid* means the base fluid that was used to formulate a drilling fluid.

(kk) *Synthetic material* as applied to synthetic-based drilling fluid means material produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAH's) but are sometimes found to contain levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Internal olefins and vegetable esters are two examples of synthetic materials suitable for use by the oil and gas extraction industry in formulating drilling fluids. Internal olefins are synthesized from the isomerization of purified straight-chain (linear) hydrocarbons such as C_{16}–C_{18} linear alpha olefins. C_{16}–C_{18} linear alpha olefins are unsaturated hydrocarbons with the carbon to carbon double bond in the terminal position. Internal olefins are typically formed from heating linear alpha olefins with a catalyst. The feed material for synthetic linear alpha olefins is typically purified ethylene. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. EPA listed these two branches of synthetic fluid base materials to provide examples, and EPA does not mean to exclude other synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

(ll) *Well completion fluids* means salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(mm) *Well treatment fluids* means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(nn) *Workover fluids* means salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(oo) *4-day* LC_{50} as applied to the sediment toxicity BAT effluent limitations and NSPS means the concentration (milligrams/kilogram dry sediment) of the drilling fluid in sediment that is lethal to 50 percent of the Leptocheirus plumulosus test organisms exposed to that concentration of the drilling fluids after four days of constant exposure.

(pp) *10-day* LC_{50} as applied to the sediment toxicity BAT effluent limitations and NSPS means the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment that is lethal to 50 percent of the Leptocheirus plumulosus test organisms exposed to that concentration of the base fluids after ten days of constant exposure.

(qq) *96-hour* LC_{50} means the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

(rr) *C_{16}–C_{18} internal olefin* means a 65/35 blend, proportioned by mass, of hexadecene and octadecene, respectively. Hexadecene is an unsaturated hydrocarbon with a carbon chain length of 16, an internal double carbon bond, and is represented by the Chemical Abstracts Service (CAS) No. 26952–14–7. Octadecene is an unsaturated hydrocarbon with a carbon chain length of 18, an internal double carbon bond, and is represented by the Chemical Abstracts Service (CAS) No. 27070–58–2. (Properties available from the Chemical Abstracts Service, 2540 Olentangy River Road, PO Box 3012, Columbus, OH, 43210).

(ss) *C_{16}–C_{18} internal olefin drilling fluid* means a C_{16}–C_{18} internal olefin drilling fluid formulated as specified in Appendix 8 of subpart A of this part.

(tt) *C_{12}–C_{14} ester* and *C_8 ester* means the fatty acid/2-ethylhexyl esters with carbon chain lengths ranging from 8 to 16 and represented by the Chemical Abstracts Service (CAS) No. 135800–37–2. (Properties available from the Chemical Abstracts Service, 2540 Olentangy River Road, PO Box 3012, Columbus, OH, 43210)

3. In § 435.12 the table is amended by removing the entries ''Drilling muds'' and ''Drill cuttings'' and by adding new entries (after ''Deck drainage'') for ''Water based'' and ''Non-aqueous'' to read as follows:

§ 435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

BPT EFFLUENT LIMITATIONS—OIL AND GREASE

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
* * * * * * *			
Water-based:			
Drilling fluids	(1)	(1)	NA
Drill Cuttings	(1)	(1)	NA
Non-aqueous:			
Drilling fluids	No discharge	No discharge	NA
Drill Cuttings	(1)	(1)	NA
* * * * * * *			

[1] No discharge of free oil.

* * * * *

4. In § 435.13 the table is amended by revising entry (B) under ''Drilling fluids and drill cuttings'' and by revising footnote 2 and adding footnotes 5–11 to read as follows:

§ 435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

BAT EFFLUENT LIMITATIONS

Waste source	Pollutant parameter	BAT effluent limitation
* * * * * * *		
Drilling fluids and drill cuttings:		
* * * * * * *		
(B) For facilities located beyond 3 miles from shore:		
Water-based drilling fluids and associated drill cuttings.	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP Toxicity Test[2] shall be 3% by volume.
	Free oil	No discharge.[3]
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
Non-aqueous drilling fluids (NAFs).		No discharge.
Drill cuttings associated with non-aqueous drilling fluids:		
Stock Limitations (C_{16}–C_{18} internal olefin).	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH).	PAH mass ratio[5] shall not exceed $1x10^{-5}$.
	Sediment toxicity	Base fluid sediment toxicity ratio[6] shall not exceed 1.0.
	Biodegradation rate	Biodegradation rate ratio[7] shall not exceed 1.0.
Discharge Limitations	Diesel oil	No discharge.
	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP Toxicity Test[2] shall be 3% by volume.
	Sediment toxicity	Drilling fluid sediment toxicity ratio[8] shall not exceed 1.0.
	Formation Oil	No discharge.[9]
	Base fluid retained on cuttings	For NAFs that meet the stock limitations (C_{16}–C_{18} internal olefin) in this table, the maximum weighted mass ratio averaged over all NAF well sections shall be 6.9 g-NAF base fluid/100 g-wet drill cuttings.[10] For NAFs that meet the C_{12}–C_{14} ester or C_8 ester stock limitations in footnote 11 of this table, the maximum weighted mass ratio averaged over all NAF well sections shall be 9.4 g-NAF base fluid/100 g-wet drill cuttings.

BAT EFFLUENT LIMITATIONS—Continued

Waste source	Pollutant parameter	BAT effluent limitation
* * * * * * *		

* * * * * * *

[2] As determined by the suspended particulate phase (SPP) toxicity test (Appendix 2 of subpart A of this part).

[3] As determined by the static sheen test (Appendix 1 of subpart A of this part).

* * * * * * *

[5] PAH mass ratio = Mass (g) of PAH (as phenanthrene)/Mass (g) of stock base fluid as determined by EPA Method 1654, Revision A, (specified at § 435.11(u)) entitled ''PAH Content of Oil by HPLC/UV,'' December 1992, which is published in *Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges,* EPA–821–R–92–008. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Technical Information Service, Springfield, VA 22161, 703–605–6000. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

[6] Base fluid sediment toxicity ratio = 10-day LC_{50} of C_{16}–C_{18} internal olefin/10-day LC_{50} of stock base fluid as determined by ASTM E 1367–92 [specified at § 435.11(ee)] method: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods,'' 1992, after preparing the sediment according to the method specified in Appendix 3 of subpart A of this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

[7] Biodegradation rate ratio = Cumulative gas production (ml) of C_{16}–C_{18} internal olefin/Cumulative gas production (ml) of stock base fluid, both at 275 days as determined by ISO 11734:1995 [specified at § 435.11(e)] method: ''Water quality—Evaluation of the 'ultimate' anaerobic biodegradability of organic compounds in digested sludge—Method by measurement of the biogas production (1995 edition)'' as modified for the marine environment (Appendix 4 of subpart A of this part). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

[8] Drilling fluid sediment toxicity ratio = 4-day LC_{50} of C_{16}–C_{18} internal olefin drilling fluid/4-day LC_{50} of drilling fluid removed from drill cuttings at the solids control equipment as determined by ASTM E 1367–92 (specified at § 435.11(ee)) method: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods,'' 1992, after preparing the sediment according to the method specified in Appendix 3 of subpart A of this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

[9] As determined before drilling fluids are shipped offshore by the GC/MS compliance assurance method (Appendix 5 of subpart A of this part), and as determined prior to discharge by the RPE method (Appendix 6 of subpart A of this part) applied to drilling fluid removed from drill cuttings. If the operator wishes to confirm the results of the RPE method (Appendix 6 of subpart A of this part), the operator may use the GC/MS compliance assurance method (Appendix 5 of subpart A of this part). Results from the GC/MS compliance assurance method (Appendix 5 of subpart A of this part) shall supercede the results of the RPE method (Appendix 6 of subpart A of this part).

[10] Maximum permissible retention of non-aqueous drilling fluid (NAF) base fluid on wet drill cuttings averaged over drilling intervals using NAFs as determined by the API retort method (Appendix 7 of subpart A of this part). This limitation is applicable for NAF base fluids that meet the base fluid sediment toxicity ratio (Footnote 6), biodegradation rate ratio (Footnote 7), PAH, mercury, and cadmium stock limitations (C_{16}–C_{18} internal olefin) defined above in this table.

[11] Maximum permissible retention of non-aqueous drilling fluid (NAF) base fluid on wet drill cuttings average over drilling intervals using NAFs as determined by the API retort method (Appendix 7 of subpart A of this part). This limitation is applicable for NAF base fluids that meet the ester base fluid sediment toxicity ratio and ester biodegradation rate ratio stock limitations defined as: (a) ester base fluid sediment toxicity ratio = 10-day LC_{50} of C_{12}–C_{14} ester or C_8 ester /10-day LC_{50} of stock base fluid as determined by ASTM E 1367–92 (specified at § 435.11(ee)) method: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods,'' 1992, after preparing the sediment according to the method specified in Appendix 3 of subpart A of this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460. (b) ester biodegradation rate ratio = Cumulative gas production (ml) of C_{12}–C_{14} ester or C_8 ester/Cumulative gas production (ml) of stock base fluid, both at 275 days as determined by ISO 11734:1995 (specified at § 435.11(e)) method: ''Water quality—Evaluation of the 'ultimate' anaerobic biodegradability of organic compounds in digested sludge—Method by measurement of the biogas production (1995 edition)'' as modified for the marine environment (Appendix 4 of subpart A of this part). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460. (c) PAH mass ratio (Footnote 5), mercury, and cadmium stock limitations (C_{16}–C_{18} internal olefin) defined above in this table.

5. In § 435.14 the table is amended by revising entry (B) under ''Drilling fluids and drill cuttings'' to read as follows:

§ 435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

BCT EFFLUENT LIMITATIONS

Waste source	Pollutant parameter	BCT effluent limitation
* * * * * * *		
Drilling fluids and drill cuttings:		

BCT EFFLUENT LIMITATIONS—Continued

Waste source	Pollutant parameter	BCT effluent limitation
* * * * * * *		
(B) For facilities located beyond 3 miles from shore:		
Water-based drilling fluids and associated drill cuttings	Free Oil	No discharge.[2]
Non-aqueous drilling fluids		No discharge.
Drill cuttings associated with non-aqueous drilling fluids	Free Oil	No discharge.[2]
* * * * * * *		

[2] As determined by the static sheen test (Appendix 1 of Subpart A of this part).

* * * * * * *

6. In § 435.15 the table is amended by revising entry (B) under ''Drilling fluids and drill cuttings'' and by revising footnote 2 and adding footnotes 5–11 to read as follows:

§ 435.15 Standards of performance for new sources (NSPS).

* * * * *

NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Waste source	Pollutant parameter	NSPS
* * * * * * *		
Drilling fluids and drill cuttings:		
* * * * * * *		
(B) For facilities located beyond 3 miles from shore:		
Water-based drilling fluids and associated drill cuttings.	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP Toxicity Test[2] shall be 3% by volume.
	Free oil	No discharge.[3]
	Diesel oil	No charge.
	Mercury	1mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
Non-aqueous drilling fluids		No charge.
Drill cuttings associated with non-aqueous drilling fluids:		
Stock Limitations (C_{16}–C_{18} internal olefin.	Mercury	1mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH).	PAH mass ratio[5] shall not exceed 1×10^{-5}
	Sediment toxicity	Base fluid sediment toxicity ratio[6] shall not exceed 1.0.
	Biodegradation rate	Biodegradation rate ratio[7] shall not exceed 1.0.
Discharge Limitations	Diesel oil	No discharge.
	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP Toxicity Test[2] shall be 3% by volume.
	Sediment toxicity	Drilling fluid sediment toxicity ratio[8] shall not exceed 1.0.
	Formation Oil	No discharge.[9]
	Base fluid retained on cuttings	For NAFs that meet the stock limitations (C_{16}–C_{18} internal olefin) in this table, the maximum weighted mass ratio averaged over all NAF well sections shall be 6.9 g–NAF base fluid/100 g-wet drill cuttings.[10] For NAFs that meet the C_{12}–C_{14} ester or C_8 ester stock limitations in footnote 11 of this table, the maximum weighted mass ratio averaged over all NAF well sections shall be 9.4 g–NAF base fluid/100 g-wet drill cuttings.
* * * * * * *		

* * * * * * *

[2] As determined by the suspended particulate phase (SPP) toxicity test (Appendix 2 of subpart A of this part).

[3] As determined by the static sheen test (appendix 1 of subpart A of this part).

* * * * * * *

[5] PAH mass ratio = Mass (g) of PAH (as phenanthrene)/Mass (g) of stock base fluid as determined by EPA Method 1654, Revision A, (specified at § 435.11(u)) entitled ''PAH Content of Oil by HPLC/UV,'' December 1992, which is published in *Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges*, EPA–821–R–92–008. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Technical Information Service, Springfield, VA 22161, 703–605–6000. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

[6] Base fluid sediment toxicity ratio = 10-day LC_{50} of C_{16}–C_{18} internal olefin/10-day LC_{50} of stock base fluid as determined by ASTM E 1367–92 (specified at §435.11(ee)) method: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods,'' 1992, after preparing the sediment according to the method specified in Appendix 3 of subpart A of this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

[7] Biodegradation rate ratio = Cumulative gas production (ml) of C_{16}–C_{18} internal olefin/Cumulative gas production (ml) of stock base fluid, both at 275 days as determined by ISO 11734:1995 (specified at §435.11(e)) method: ''Water quality—Evaluation of the 'ultimate' anaerobic biodegradability of organic compounds in digested sludge—Method by measurement of the biogas production (1995 edition)'' as modified for the marine environment (Appendix 4 of subpart A of this part). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

[8] Drilling fluid sediment toxicity ratio = 4-day LC_{50} of C_{16}–C_{18} internal olefin drilling fluid/4-day LC_{50} of drilling fluid removed from drill cuttings at the solids control equipment as determined by ASTM E 1367–92 (specified at §435.11(ee)) method: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods,'' 1992, after preparing the sediment according to the method specified in Appendix 3 of subpart A of this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

[9] As determined before drilling fluids are shipped offshore by the GC/MS compliance assurance method (Appendix 5 of subpart A of this part), and as determined prior to discharge by the RPE method (Appendix 6 of subpart A of this part) applied to drilling fluid removed from drill cuttings. If the operator wishes to confirm the results of the RPE method (Appendix 6 of subpart A of this part), the operator may use the GC/MS compliance assurance method (Appendix 5 of subpart A of this part). Results from the GC/MS compliance assurance method (Appendix 5 of subpart A of this part) shall supercede the results of the RPE method (Appendix 6 of subpart A of this part).

[10] Maximum permissible retention of non-aqueous drilling fluid (NAF) base fluid on wet drill cuttings averaged over drilling intervals using NAFs as determined by the API retort method (Appendix 7 of subpart A of this part). This limitation is applicable for NAF base fluids that meet the base fluid sediment toxicity ratio (Footnote 6), biodegradation rate ratio (Footnote 7), PAH, mercury, and cadmium stock limitations (C_{16}–C_{18} internal olefin) defined above in this table.

[11] Maximum permissible retention of non-aqueous drilling fluid (NAF) base fluid on wet drill cuttings average over drilling intervals using NAFs as determined by the API retort method (Appendix 7 of subpart A of this part). This limitation is applicable for NAF base fluids that meet the ester base fluid sediment toxicity ratio and ester biodegradation rate ratio stock limitations defined as: (a) Ester base fluid sediment toxicity ratio = 10-day LC_{50} of C_{12}–C_{14} ester or C_8 ester /10-day LC_{50} of stock base fluid as determined by ASTM E 1367–92 [specified at §435.11(ee)] method: ''Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods,'' 1992, after preparing the sediment according to the method specified in Appendix 3 of subpart A of this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460; (b) Ester biodegradation rate ratio = Cumulative gas production (ml) of C_{12}–C_{14} ester or C_8 ester/Cumulative gas production (ml) of stock base fluid, both at 275 days as determined by ISO 11734:1995 (specified at §435.11(e)) method: ''Water quality—Evaluation of the 'ultimate' anaerobic biodegradability of organic compounds in digested sludge—Method by measurement of the biogas production (1995 edition)'' as modified for the marine environment (Appendix 4 of subpart A of this part). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460; and (c) PAH mass ratio (Footnote 5), mercury, and cadmium stock limitations (C_{16}–C_{18} internal olefin) defined above in this table.

7. Subpart A of this part is amended by adding Appendices 3 through 8 as follows:

Appendix 3 to Subpart A of Part 435—Procedure for Mixing Base Fluids with Sediments

This procedure describes a method for amending uncontaminated and nontoxic (control) sediments with the base fluids that are used to formulate synthetic-based drilling fluids and other non-aqueous drilling fluids. Initially, control sediments shall be press-sieved through a 2000 micron mesh sieve to remove large debris. Then press-sieve the sediment through a 500 micron sieve to remove indigenous organisms that may prey on the test species or otherwise confound test results. Homogenize control sediment to limit the effects of settling that may have occurred during storage. Sediments should be homogenized before density determinations and addition of base fluid to control sediment. Because base fluids are strongly hydrophobic and do not readily mix with sediment, care must be taken to ensure base fluids are thoroughly homogenized within the sediment. All concentrations are weight-to-weight (mg of base fluid to kg of dry control sediment). Sediment and base fluid mixing shall be accomplished by using the following method.

1. Determine the wet to dry ratio for the control sediment by weighing approximately 10 g subsamples of the screened and homogenized wet sediment into tared aluminum weigh pans. Dry sediment at 105 °C for 18–24 h. Remove sediment and cool in a desiccator until a constant weight is achieved. Re-weigh the samples to determine the dry weight. Determine the wet/dry ratio by dividing the net wet weight by the net dry weight:

[Wet Sediment Weight (g)]/[Dry Sediment Weight (g)] = Wet to Dry Ratio [1]

2. Determine the density (g/mL) of the wet control or dilution sediment. This shall be used to determine total volume of wet sediment needed for the various test treatments.

[Mean Wet Sediment Weight (g)]/[Mean Wet Sediment Volume (mL)] = Wet Sediment Density (g/mL) [2]

3. To determine the amount of base fluid needed to obtain a test concentration of 500 mg base fluid per kg dry sediment use the following formulas:

Determine the amount of wet sediment required:

[Wet Sediment Density (g/mL)] × [Volume of Sediment Required per Concentration (mL)] = Weight Wet Sediment Required per Conc. (g) [3]

Determine the amount of dry sediment in kilograms (kg) required for each concentration:

{[Wet Sediment per Concentration (g)]/[Mean Wet to Dry Ratio]} × (1kg/1000g) = Dry Weight Sediment (kg) [4]

Finally, determine the amount of base fluid required to spike the control sediment at each concentration:

[Conc. Desired (mg/kg)] × [Dry Weight Sediment (kg)] = Base Fluid Required (mg) [5]

For spiking test substances other than pure base fluids (*e.g.*, whole mud formulations), determine the spike amount as follows:

[Conc. Desired (mL/kg)] × [Dry Weight Sediment (kg)] × [Test Substance Density (g/mL)] = Test Substance Required (g) [6]

4. For primary mixing, place appropriate amounts of weighed base fluid into stainless mixing bowls, tare the vessel weight, then add sediment and mix with a high-shear dispersing impeller for 9 minutes. The concentration of base fluid in sediment from this mix, rather than the nominal concentration, shall be used in calculating LC_{50} values.

5. Tests for homogeneity of base fluid in sediment are to be performed during the procedure development phase. Because of

difficulty of homogeneously mixing base fluid with sediment, it is important to demonstrate that the base fluid is evenly mixed with sediment. The sediment shall be analyzed for total petroleum hydrocarbons (TPH) using EPA Methods 3550A and 8015M, with samples taken both prior to and after distribution to replicate test containers. Base-fluid content is measured as TPH. After mixing the sediment, a minimum of three replicate sediment samples shall be taken prior to distribution into test containers. After the test sediment is distributed to test containers, an additional three sediment samples shall be taken from three test containers to ensure proper distribution of base fluid within test containers. Base-fluid content results shall be reported within 48 hours of mixing. The coefficient of variation (CV) for the replicate samples must be less than 20%. If base-fluid content results are not within the 20% CV limit, the test sediment shall be remixed. Tests shall not begin until the CV is determined to be below the maximum limit of 20%. During the test, a minimum of three replicate containers shall be sampled to determine base-fluid content during each sampling period.

6. Mix enough sediment in this way to allow for its use in the preparation of all test concentrations and as a negative control. When commencing the sediment toxicity test, range-finding tests may be required to determine the concentrations that produce a toxic effect if these data are otherwise unavailable. The definitive test shall bracket the LC_{50}, which is the desired endpoint. The results for the base fluids shall be reported in mg of base fluid per kg of dry sediment.

References

American Society for Testing and Materials (ASTM). 1996. Standard Guide for Collection, Storage, Characterization, and Manipulation of Sediments for Toxicological Testing. ASTM E 1391–94. Annual Book of ASTM Standards, Volume 11.05, pp. 805–825.

Ditsworth, G.R., D.W. Schults and J.K.P. Jones. 1990. Preparation of benthic substrates for sediment toxicity testing, Environ. Toxicol. Chem. 9:1523–1529.

Suedel, B.C., J.H. Rodgers, Jr. and P.A. Clifford. 1993. Bioavailability of fluoranthene in freshwater sediment toxicity tests. Environ. Toxicol. Chem. 12:155–165.

U.S. EPA. 1994. Methods for Assessing the Toxicity of Sediment-associated Contaminants with Estuarine and Marine Amphipods. EPA/600/R–94/025. Office of Research and Development, Washington, DC.

Appendix 4 to Subpart A of Part 435—Determination of Biodegradation of Synthetic Base Fluids in a Marine Closed Bottle Test System: Summary of Modifications to ISO 11734:1995

The six modifications specified in this Appendix shall apply to the determination of the biodegradability of synthetic base fluids as measured by ISO 11734:1995. These modifications make the test more applicable to a marine environment and are listed below:

1. The laboratory shall use sea water in place of freshwater media.

1.1 The sea water may be either natural or synthetic. The allowable salinity range is 20–30 ppt.

1.2 To reduce the shock to the microorganisms in the sediment, the salinity of the sediment's porewater shall be between 20–30 ppt.

2. The laboratory shall use natural marine or estuarine sediments in place of digested sludge as an inoculum. The VS of the sediments must be no less than 2%.

2.1 Sediment should be used for testing as soon as possible after field collection. If required, the laboratory can store the sediment for a maximum period of two months prior to use. The test sediment shall be stored in the dark at 4°C.

2.2 The laboratory shall use the sediment mixing procedure specified in Appendix 3 to Subpart A of part 435 to spike the test sediment with base fluids. The final concentration will be 2000 mg carbon/Kg dry weight sediment. No less than 25 g dry weight of the spiked sediment shall be used per 125 ml serum bottle. The volume of sediment and seawater in the bottle shall be 75 ml.

3. The temperature of incubation shall be 29±1°C.

4. The pH is maintained at the level of natural sea water, not at 7.0 as referenced in ISO 11734:1995.

5. The optional use of a trace metals solution as specified in method ISO 11734:1995 shall not be used as part of these test modifications.

6. The laboratory shall conduct the test for 275 days. The laboratory may seek approval of alternate test durations under the approval procedures specified at 40 CFR 136.4 and 136.5. Any modification of this method, beyond those expressly permitted, shall be considered a major modification subject to application and approval of alternate test procedures under 40 CFR 136.4 and 136.5.

Appendix 5 to Subpart A of Part 435—Determination of Crude Oil Contamination in Non-Aqueous Drilling Fluids by Gas Chromatography/Mass Spectrometry (GC/MS)

1.0 Scope and Application

1.1 This method determines crude (formation) oil contamination, or other petroleum oil contamination, in non-aqueous drilling fluids (NAFs) by comparing the gas chromatography/mass spectrometry (GC/MS) fingerprint scan and extracted ion scans of the test sample to that of an uncontaminated sample.

1.2 This method can be used for monitoring oil contamination of NAFs or monitoring oil contamination of the base fluid used in the NAF formulations.

1.3 Any modification of this method beyond those expressly permitted shall be considered as a major modification subject to application and approval of alternative test procedures under 40 CFR 136.4 and 136.5.

1.4 The gas chromatography/mass spectrometry portions of this method are restricted to use by, or under the supervision of analysts experienced in the use of GC/MS and in the interpretation of gas chromatograms and extracted ion scans. Each laboratory that uses this method must generate acceptable results using the procedures described in Sections 7, 9.2, and 12 of this appendix.

2.0 Summary of Method

2.1 Analysis of NAF for crude oil contamination is a step-wise process. The analyst first performs a qualitative assessment of the presence or absence of crude oil in the sample. If crude oil is detected during this qualitative assessment, the analyst must perform a quantitative analysis of the crude oil concentration.

2.2 A sample of NAF is centrifuged to obtain a solids free supernate.

2.3 The test sample is prepared by removing an aliquot of the solids free supernate, spiking it with internal standard, and analyzing it using GC/MS techniques. The components are separated by the gas chromatograph and detected by the mass spectrometer.

2.4 Qualitative identification of crude oil contamination is performed by comparing the Total Ion Chromatograph (TIC) scans and Extracted Ion Profile (EIP) scans of test sample to that of uncontaminated base fluids, and examining the profiles for chromatographic signatures diagnostic of oil contamination.

2.5 The presence or absence of crude oil contamination observed in the full scan profiles and selected extracted ion profiles determines further sample quantitation and reporting requirements.

2.6 If crude oil is detected in the qualitative analysis, quantitative analysis must be performed by calibrating the GC/MS using a designated NAF spiked with known concentrations of a designated oil.

2.7 Quality is assured through reproducible calibration and testing of GC/MS system and through analysis of quality control samples.

3.0 Definitions

3.1 A NAF is one in which the continuous— phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhance mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).

3.2 TIC—Total Ion Chromatograph.

3.3 EIP—Extracted Ion Profile.

3.4 TCB—1,3,5-trichlorobenzene is used as the internal standard in this method.

3.5 SPTM—System Performance Test Mix standards are used to establish retention times and monitor detection levels.

4.0 Interferences and Limitations

4.1 Solvents, reagents, glassware, and other sample processing hardware may yield artifacts and/or elevated baselines causing misinterpretation of chromatograms.

4.2 All Materials used in the analysis shall be demonstrated to be free from interferences by running method blanks. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required.

4.3 Glassware shall be cleaned by rinsing with solvent and baking at 400 °C for a minimum of 1 hour.

4.4 Interferences may vary from source to source, depending on the diversity of the samples being tested.

4.5 Variations in and additions of base fluids and/or drilling fluid additives (emulsifiers, dispersants, fluid loss control agents, etc.) might also cause interferences and misinterpretation of chromatograms.

4.6 Difference in light crude oils, medium crude oils, and heavy crude oils will result in different responses and thus different interpretation of scans and calculated percentages.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely determined; however each chemical shall be treated as a potential health hazard. Exposure to these chemicals should be reduced to the lowest possible level.

5.2 Unknown samples may contain high concentration of volatile toxic compounds. Sample containers should be opened in a hood and handled with gloves to prevent exposure. In addition, all sample preparation should be conducted in a fume hood to limit the potential exposure to harmful contaminates.

5.3 This method does not address all safety issues associated with its use. The laboratory is responsible for maintaining a safe work environment and a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) shall be available to all personnel involved in these analyses. Additional references to laboratory safety can be found in References 16.1 through 16.3.

5.4 NAF base fluids may cause skin irritation, protective gloves are recommended while handling these samples.

6.0 Apparatus and Materials

Note: Brand names, suppliers, and part numbers are for illustrative purposes only. No endorsement is implied. Equivalent performance may be achieved using apparatus and materials other than those specified here, but demonstration of equivalent performance meeting the requirements of this method is the responsibility of the laboratory.

6.1 Equipment for glassware cleaning.

6.1.1 Laboratory sink with overhead fume hood.

6.1.2 Kiln—Capable of reaching 450 °C within 2 hours and holding 450 °C within ±10 °C, with temperature controller and safety switch (Cress Manufacturing Co., Santa Fe Springs, CA B31H or X31TS or equivalent).

6.2 Equipment for sample preparation.

6.2.1 Laboratory fume hood.

6.2.2 Analytical balance—Capable of weighing 0.1 mg.

6.2.3 Glassware.

6.2.3.1 Disposable pipettes—Pasteur, 150 mm long by 5 mm ID (Fisher Scientific 13–678–6A, or equivalent) baked at 400 °C for a minimum of 1 hour.

6.2.3.2 Glass volumetric pipettes or gas tight syringes—1.0-mL ± 1% and 0.5-mL ± 1%.

6.2.3.3 Volumetric flasks—Glass, class A, 10-mL, 50-mL and 100-mL.

6.2.3.4—Sample vials—Glass, 1- to 3-mL (baked at 400 °C for a minimum of 1 hour) with PTFE-lined screw or crimp cap.

6.2.3.5 Centrifuge and centrifuge tubes—Centrifuge capable of 10,000 rpm, or better, (International Equipment Co., IEC Centra MP4 or equivalent) and 50-mL centrifuge tubes (Nalgene, Ultratube, Thin Wall 25×89 mm, #3410–2539).

6.3 Gas Chromatograph/Mass Spectrometer (GC/MS):

6.3.1 Gas Chromatograph—An analytical system complete with a temperature-programmable gas chromatograph suitable for split/splitless injection and all required accessories, including syringes, analytical columns, and gases.

6.3.1.1 Column—30 m (or 60 m) × 0.32 mm ID (or 0.25 mm ID) 1µm film thickness (or 0.25µm film thickness) silicone-coated fused-silica capillary column (J&W Scientific DB–5 or equivalent).

6.3.2 Mass Spectrometer—Capable of scanning from 35 to 500 amu every 1 sec or less, using 70 volts (nominal) electron energy in the electron impact ionization mode (Hewlett Packard 5970MS or comparable).

6.3.3 GC/MS interface—the interface is a capillary-direct interface from the GC to the MS.

6.3.4—Data system—A computer system must be interfaced to the mass spectrometer. The system must allow the continuous acquisition and storage on machine-readable media of all mass spectra obtained throughout the duration of the chromatographic program. The computer must have software that can search any GC/MS data file for ions of a specific mass and that can plot such ion abundance versus retention time or scan number. This type of plot is defined as an Extracted Ion Current Profile (EIP). Software must also be available that allows integrating the abundance in any total ion chromatogram (TIC) or EIP between specified retention time or scan-number limits. It is advisable that the most recent version of the EPA/NIST Mass Spectral Library be available.

7.0 Reagents and Standards

7.1 Methylene chloride—Pesticide grade or equivalent. Use when necessary for sample dilution.

7.2 Standards—Prepare from pure individual standard materials or purchase as certified solutions. If compound purity is 96% or greater, the weight may be used without correction to compute the concentration of the standard.

7.2.1 Crude Oil Reference—Obtain a sample of a crude oil with a known API gravity. This oil shall be used in the calibration procedures.

7.2.2 Synthetic Base Fluid—Obtain a sample of clean internal olefin (IO) Lab drilling fluid (as sent from the supplier—has not been circulated downhole). This drilling fluid shall be used in the calibration procedures.

7.2.3 Internal standard—Prepare a 0.01 g/mL solution of 1,3,5-trichlorobenzene (TCB). Dissolve 1.0 g of TCB in methylene chloride and dilute to volume in a 100-mL volumetric flask. Stopper, vortex, and transfer the solution to a 150-mL bottle with PTFE-lined cap. Label appropriately, and store at –5 °C to 20 °C. Mark the level of the meniscus on the bottle to detect solvent loss.

7.2.4 GC/MS system performance test mix (SPTM) standards—The SPTM standards shall contain octane, decane, dodecane, tetradecane, tetradecene, toluene, ethylbenzene, 1,2,4-trimethylbenzene, 1-methylnaphthalene and 1,3-dimethylnaphthalene. These compounds can be purchased individually or obtained as a mixture (i.e. Supelco, Catalog No. 4–7300). Prepare a high concentration of the SPTM standard at 62.5 mg/mL in methylene chloride. Prepare a medium concentration SPTM standard at 1.25 mg/mL by transferring 1.0 mL of the 62.5 mg/mL solution into a 50 mL volumetric flask and diluting to the mark with methylene chloride. Finally, prepare a low concentration SPTM standard at 0.125 mg/mL by transferring 1.0 mL of the 1.25 mg/mL solution into a 10-mL volumetric flask and diluting to the mark with methylene chloride.

7.2.5 Crude oil/drilling fluid calibration standards—Prepare a 4-point crude oil/drilling fluid calibration at concentrations of 0% (no spike—clean drilling fluid), 0.5%, 1.0%, and 2.0% by weight according to the procedures outlined in this appendix using the Reference Crude Oil:

7.2.5.1 Label 4 jars with the following identification: Jar 1—0%Ref-IOLab, Jar 2—0.5%Ref-IOLab, Jar 3—1%Ref-IOLab, and Jar 4—2%Ref-IOLab.

7.2.5.2 Weigh 4, 50-g aliquots of well mixed IO Lab drilling fluid into each of the 4 jars.

7.2.5.3 Add Reference Oil at 0.5%, 1.0%, and 2.0% by weight to jars 2, 3, and 4 respectively. Jar 1 shall not be spiked with Reference Oil in order to retain a ''0%'' oil concentration.

7.2.5.4 Thoroughly mix the contents of each of the 4 jars, using clean glass stirring rods.

7.2.5.5 Transfer (weigh) a 30-g aliquot from Jar 1 to a labeled centrifuge tube. Centrifuge the aliquot for a minimum of 15 min at approximately 15,000 rpm, in order to obtain a solids free supernate. Weigh 0.5 g of the supernate directly into a tared and appropriately labeled GC straight vial. Spike the 0.5-g supernate with 500 µL of the 0.01g/mL 1,3,5-trichlorobenzene internal standard solution (*see* Section 7.2.3 of this appendix), cap with a Teflon lined crimp cap, and vortex for ca. 10 sec.

7.2.5.6 Repeat step 7.2.5.5 except use an aliquot from Jar 2.

7.2.5.7 Repeat step 7.2.5.5 except use an aliquot from Jar 3.

7.2.5.8 Repeat step 7.2.5.5 except use an aliquot from Jar 4.

7.2.5.9 These 4 crude/oil drilling fluid calibration standards are now used for qualitative and quantitative GC/MS analysis.

7.2.6 Precision and recovery standard (mid level crude oil/drilling fluid calibration standard)—Prepare a mid point crude oil/drilling fluid calibration using IO Lab drilling fluid and Reference Oil at a concentration of 1.0% by weight. Prepare this standard according to the procedures outlined in Section 7.2.5.1 through 7.2.5.5 of this appendix, with the exception that only ''Jar

3'' needs to be prepared. Remove and spike with internal standard, as many 0.5-g aliquots as needed to complete the GC/MS analysis (*see* Section 11.6 of this appendix—bracketing authentic samples every 12 hours with precision and recovery standard) and the initial demonstration exercise described in Section 9.2 of this appendix.

7.2.7 Stability of standards

7.2.7.1 When not used, standards shall be stored in the dark, at −5 to −20 °C in screw-capped vials with PTFE-lined lids. Place a mark on the vial at the level of the solution so that solvent loss by evaporation can be detected. Bring the vial to room temperature prior to use.

7.2.7.2 Solutions used for quantitative purposes shall be analyzed within 48 hours of preparation and on a monthly basis thereafter for signs of degradation. A standard shall remain acceptable if the peak area remains within ±15% of the area obtained in the initial analysis of the standard.

8.0 Sample Collection Preservation and Storage

8.1 Collect NAF and base fluid samples in 100- to 200-mL glass bottles with PTFE- or aluminum foil lined caps.

8.2 Samples collected in the field shall be stored refrigerated until time of preparation.

8.3 Sample and extract holding times for this method have not yet been established. However, based on initial experience with the method, samples should be analyzed within seven to ten days of collection and extracts should be analyzed within seven days of preparation.

8.4 After completion of GC/MS analysis, extracts shall be refrigerated at 4 °C until further notification of sample disposal.

9.0 Quality Control

9.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 16.4). The minimum requirements of this program shall consist of an initial demonstration of laboratory capability, and ongoing analysis of standards, and blanks as a test of continued performance, analyses of spiked samples to assess accuracy and analysis of duplicates to assess precision. Laboratory performance shall be compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method.

9.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability shall be established as described in Section 9.2 of this appendix.

9.1.2 The analyst is permitted to modify this method to improve separations or lower the cost of measurements, provided all performance requirements are met. Each time a modification is made to the method, the analyst is required to repeat the calibration (Section 10.4 of this appendix) and to repeat the initial demonstration procedure described in Section 9.2 of this appendix.

9.1.3 Analyses of blanks are required to demonstrate freedom from contamination. The procedures and criteria for analysis of a blank are described in Section 9.3 of this appendix.

9.1.4 Analysis of a matrix spike sample is required to demonstrate method accuracy. The procedure and QC criteria for spiking are described in Section 9.4 of this appendix.

9.1.5 Analysis of a duplicate field sample is required to demonstrate method precision. The procedure and QC criteria for duplicates are described in Section 9.5 of this appendix.

9.1.6 Analysis of a sample of the clean NAF(s) (as sent from the supplier—i.e., has not been circulated downhole) used in the drilling operations is required.

9.1.7 The laboratory shall, on an ongoing basis, demonstrate through calibration verification and the analysis of the precision and recovery standard (Section 7.2.6 of this appendix) that the analysis system is in control. These procedures are described in Section 11.6 of this appendix.

9.1.8 The laboratory shall maintain records to define the quality of data that is generated.

9.2 Initial precision and accuracy—The initial precision and recovery test shall be performed using the precision and recovery standard (1% by weight Reference Oil in IO Lab drilling fluid). The laboratory shall generate acceptable precision and recovery by performing the following operations.

9.2.1 Prepare four separate aliquots of the precision and recovery standard using the procedure outlined in Section 7.2.6 of this appendix. Analyze these aliquots using the procedures outlined in Section 11 of this appendix.

9.2.2 Using the results of the set of four analyses, compute the average recovery (X) in weight percent and the standard deviation of the recovery(s) for each sample.

9.2.3 If s and X meet the acceptance criteria of 80% to 110%, system performance is acceptable and analysis of samples may begin. If, however, s exceeds the precision limit or X falls outside the range for accuracy, system performance is unacceptable. In this event, review this method, correct the problem, and repeat the test.

9.2.4 Accuracy and precision—The average percent recovery (P) and the standard deviation of the percent recovery (Sp) Express the accuracy assessment as a percent recovery interval from $P–2S_p$ to $P+2S_p$. For example, if P=90% and S_p=10% for four analyses of crude oil in NAF, the accuracy interval is expressed as 70% to 110%. Update the accuracy assessment on a regular basis.

9.3 Blanks—Rinse glassware and centrifuge tubes used in the method with 30 mL of methylene chloride, remove a 0.5-g aliquot of the solvent, spike it with the 500 µL of the internal standard solution (Section 7.2.3 of this appendix) and analyze a 1-µL aliquot of the blank sample using the procedure in Section 11 of this appendix. Compute results per Section 12 of this appendix.

9.4 Matrix spike sample—Prepare a matrix spike sample according to procedure outlined in Section 7.2.6 of this appendix. Analyze the sample and calculate the concentration (% oil) in the drilling fluid and % recovery of oil from the spiked drilling fluid using the methods described in Sections 11 and 12 of this appendix.

9.5 Duplicates—A duplicate field sample shall be prepared according to procedures outlined in Section 7.3 of this appendix and analyzed according to Section 11 of this appendix. The relative percent difference (RPD) of the calculated concentrations shall be less than 15%.

9.5.1 Analyze each of the duplicates per the procedure in Section 11 of this appendix and compute the results per Section 12 of this appendix.

9.5.2 Calculate the relative percent difference (RPD) between the two results per the following equation:

$$RPD = [D_1 - D_2]/[(D_1 + D_2)/2] \times 100 \quad [1]$$

where:

D_1 = Concentration of crude oil in the sample; and

D_2 = Concentration of crude oil in the duplicate sample.

9.5.3 If the RPD criteria are not met, the analytical system shall be judged to be out of control, and the problem must be immediately identified and corrected, and the sample batch re-analyzed.

9.6 Prepare the clean NAF sample according to procedures outlined in Section 7.3 of this appendix. Ultimately the oil-equivalent concentration from the TIC or EIP signal measured in the clean NAF sample shall be subtracted from the corresponding authentic field samples in order to calculate the true contaminant concentration (% oil) in the field samples (*see* Section 12 of this appendix).

9.7 The specifications contained in this method can be met if the apparatus used is calibrated properly, and maintained in a calibrated state. The standards used for initial precision and recovery (Section 9.2 of this appendix) and ongoing precision and recovery (Section 11.6 of this appendix) shall be identical, so that the most precise results will be obtained. The GC/MS instrument will provide the most reproducible results if dedicated to the setting and conditions required for the analyses given in this method.

9.8 Depending on specific program requirements, field replicates and field spikes of crude oil into samples may be required when this method is used to assess the precision and accuracy of the sampling and sample transporting techniques.

10.0 Calibration

10.1 Establish gas chromatographic/mass spectrometer operating conditions given in Table 1 of this appendix. Perform the GC/MS system hardware-tune as outlined by the manufacture. The gas chromatograph shall be calibrated using the internal standard technique.

Note: Because each GC is slightly different, it may be necessary to adjust the operating conditions (carrier gas flow rate and column temperature and temperature program) slightly until the retention times in Table 2 of this appendix are met.

TABLE 1.—GAS CHROMATOGRAPH/MASS SPECTROMETER (GC/MS) OPERATION CONDITIONS

Parameter	Setting
Injection pot	280 °C

TABLE 1.—GAS CHROMATOGRAPH/MASS SPECTROMETER (GC/MS) OPERATION CONDITIONS—Continued

Parameter	Setting
Transfer line	280 °C
Detector	280 °C
Initial Temperature	50 °C
Initial Time	5 minutes
Ramp	50 to 300 °C @ 5 °C per minute
Final Temperature	300 °C
Final Hold	20 minutes or until all peaks have eluted
Carrier Gas	Helium
Flow rate	As required for standard operation
Split ratio	As required to meet performance criteria (~1:100)
Mass range	35 to 600 amu

TABLE 2.—APPROXIMATE RETENTION TIME FOR COMPOUNDS

Compound	Approximate retention time (minutes)
Toluene	5.6
Octane, n−C_8	7.2
Ethylbenzene	10.3
1,2,4-Trimethylbenzene	16.0
Decane, −C_{10}	16.1
TCB (Internal Standard)	21.3
Dodecane, −C_{12}	22.9
1-Methylnaphthalene	26.7
1-Tetradecene	28.4
Tetradecane, −C_{14}	28.7
1,3-Dimethylnaphthalene	29.7

10.2 Internal standard calibration procedure—1,3,5-trichlorobenzene (TCB) has been shown to be free of interferences from diesel and crude oils and is a suitable internal standard.

10.3 The system performance test mix standards prepared in Section 7.2.4 of this appendix shall be used to establish retention times and establish qualitative detection limits.

10.3.1 Spike a 500-mL aliquot of the 1.25 mg/mL SPTM standard with 500 µL of the TCB internal standard solution.

10.3.2 Inject 1.0 µL of this spiked SPTM standard onto the GC/MS in order to demonstrate proper retention times. For the GC/MS used in the development of this method, the ten compounds in the mixture had typical retention times shown in Table 2 of this appendix. Extracted ion scans for m/z 91 and 105 showed a maximum abundance of 400,000.

10.3.3 Spike a 500-mL aliquot of the 0.125 mg/mL SPTM standard with 500 µL of the TCB internal standard solution.

10.3.4 Inject 1.0 µL of this spiked SPTM standard onto the GC/MS to monitor detectable levels. For the GC/MS used in the development of this test, all ten compounds showed a minimum peak height of three times signal to noise. Extracted ion scans for m/z 91 and 105 showed a maximum abundance of 40,000.

10.4 GC/MS crude oil/drilling fluid calibration—There are two methods of quantification: Total Area Integration (C_8–C_{13}) and EIP Area Integration using m/z's 91 and 105. The Total Area Integration method should be used as the primary technique for quantifying crude oil in NAFs. The EIP Area Integration method should be used as a confirmatory technique for NAFs. However, the EIP Area Integration method shall be used as the primary method for quantifying oil in enhanced mineral oil (EMO) based drilling fluid. Inject 1.0 µL of each of the four crude oil/drilling fluid calibration standards prepared in Section 7.2.5 of this appendix into the GC/MS. The internal standard should elute approximately 21–22 minutes after injection. For the GC/MS used in the development of this method, the internal standard peak was (35 to 40)% of full scale at an abundance of about 3.5e+07.

10.4.1 Total Area Integration Method—For each of the four calibration standards obtain the following: Using a straight baseline integration technique, obtain the total ion chromatogram (TIC) area from C_8 to C_{13}. Obtain the TIC area of the internal standard (TCB). Subtract the TCB area from the C_8–C_{13} area to obtain the true C_8–C_{13} area. Using the C_8–C_{13} and TCB areas, and known internal standard concentration, generate a linear regression calibration using the internal standard method. The r^2 value for the linear regression curve shall be greater than or equal to 0.998. Some synthetic fluids might have peaks that elute in the window and would interfere with the analysis. In this case the integration window can be shifted to other areas of scan where there are no interfering peaks from the synthetic base fluid.

10.4.2 EIP Area Integration—For each of the four calibration standards generate Extracted Ion Profiles (EIPs) for m/z 91 and 105. Using straight baseline integration techniques, obtain the following EIP areas:

10.4.2.1 For m/z 91 integrate the area under the curve from approximately 9 minutes to 21–22 minutes, just prior to but not including the internal standard.

10.4.2.2 For m/z 105 integrate the area under the curve from approximately 10.5 minutes to 26.5 minutes.

10.4.2.3 Obtain the internal standard area from the TCB in each of the four calibration standards, using m/z 180.

10.4.2.4 Using the EIP areas for TCB, m/z 91 and m/z105, and the known concentration of internal standard, generate linear regression calibration curves for the target ions 91 and 105 using the internal standard method. The r^2 value for each of the EIP linear regression curves shall be greater than or equal to 0.998.

10.4.2.5 Some base fluids might produce a background level that would show up on the extracted ion profiles, but there should not be any real peaks (signal to noise ratio of 1:3) from the clean base fluids.

11.0 Procedure

11.1 Sample Preparation—

11.1.1 Mix the authentic field sample (drilling fluid) well. Transfer (weigh) a 30-g aliquot of the sample to a labeled centrifuge tube.

11.1.2 Centrifuge the aliquot for a minimum of 15 min at approximately 15,000 rpm, in order to obtain a solids free supernate.

11.1.3 Weigh 0.5 g of the supernate directly into a tared and appropriately labeled GC straight vial.

11.1.4 Spike the 0.5-g supernate with 500 µL of the 0.01g/mL 1,3,5-trichlorobenzene internal standard solution (*see* Section 7.2.3 of this appendix), cap with a Teflon lined crimp cap, and vortex for ca. 10 sec.

11.1.5 The sample is ready for GC/MS analysis.

11.2 Gas Chromatography.

Table 1 of this appendix summarizes the recommended operating conditions for the GC/MS. Retention times for the n-alkanes obtained under these conditions are given in Table 2 of this appendix. Other columns, chromatographic conditions, or detectors may be used if initial precision and accuracy requirements (Section 9.2 of this appendix) are met. The system shall be calibrated according to the procedures outlined in Section 10 of this appendix, and verified every 12 hours according to Section 11.6 of this appendix.

11.2.1 Samples shall be prepared (extracted) in a batch of no more than 20 samples. The batch shall consist of 20 authentic samples, 1 blank (Section 9.3 of this appendix), 1 matrix spike sample (9.4), and 1 duplicate field sample (9.5), and a prepared sample of the corresponding clean NAF used in the drilling process.

11.2.2 An analytical sequence shall be analyzed on the GC/MS where the 3 SPTM standards (Section 7.2.4 of this appendix) containing internal standard are analyzed first, followed by analysis of the four GC/MS crude oil/drilling fluid calibration standards (Section 7.2.5 of this appendix), analysis of the blank, matrix spike sample, the duplicate sample, the clean NAF sample, followed by the authentic samples.

11.2.3 Samples requiring dilution due to excessive signal shall be diluted using methylene chloride.

11.2.4 Inject 1.0 µL of the test sample or standard into the GC, using the conditions in Table 1 of this appendix.

11.2.5 Begin data collection and the temperature program at the time of injection.

11.2.6 Obtain a TIC and EIP fingerprint scans of the sample (Table 3 of this appendix).

11.2.7 If the area of the C_8 to C_{13} peaks exceeds the calibration range of the system, dilute a fresh aliquot of the test sample weighing 0.50-g and re-analyze.

11.2.8 Determine the C_8 to C_{13} TIC area, the TCB internal standard area, and the areas for the m/z 91 and 105 EIPs. These shall be used in the calculation of oil concentration in the samples (see Section 12 of this appendix).

TABLE 3.—RECOMMENDED ION MASS NUMBERS

Selected ion mass numbers	Corresponding aromatic compounds	Typical rentention time (minutes)
91	Methylbenzene	6.0
	Ethylbenzene	10.3
	1,4-Dimethylbenzene	10.9
	1,3-Dimethylbenzene	10.9
	1,2-Dimethylbenzene	11.9
105	1,3,5-Trimethylbenzene	15.1
	1,2,4-Trimethylbenzene	16.0
	1,2,3-Trimethylbenzene	17.4
156	2,6-Dimethylnaphthalene	28.9
	1,2-Dimethylnaphthalene	29.4
	1,3-Dimethylnaphthalene	29.7

11.2.9 Observe the presence of peaks in the EIPs that would confirm the presence of any target aromatic compounds. Using the EIP areas and EIP linear regression calibrations compare the abundance of the aromatic peaks, and if appropriate, determine approximate crude oil contamination in the sample for each of the target ions.

11.3 Qualitative Identification—See Section 17 of this appendix for schematic flowchart.

11.3.1 Qualitative identification shall be accomplished by comparison of the TIC and EIP area data from an authentic sample to the TIC and EIP area data from the calibration standards (Section 12.4 of this appendix). Crude oil shall be identified by the presence of C_{10} to C_{13} n-alkanes and corresponding target aromatics.

11.3.2 Using the calibration data, establish the identity of the C_8 to C_{13} peaks in the chromatogram of the sample. Using the calibration data, establish the identity of any target aromatics present on the extracted ion scans.

11.3.3 Crude oil is not present in a detectable amount in the sample if there are no target aromatics seen on the extracted ion scans. The experience of the analyst shall weigh heavily in the determination of the presence of peaks at a signal-to-noise ratio of 3 or greater.

11.3.4 If the chromatogram shows n-alkanes from C_8 to C_{13} and target aromatics to be present, contamination by crude oil or diesel shall be suspected and quantitative analysis shall be determined. If there are no n-alkanes present that are not seen on the blank, and no target aromatics are seen, the sample can be considered to be free of contamination.

11.4 Quantitative Identification—

11.4.1 Determine the area of the peaks from C_8 to C_{13} as outlined in the calibration section (10.4.1 of this appendix). If the area of the peaks for the sample is greater than that for the clean NAF (base fluid) use the crude oil/drilling fluid calibration TIC linear regression curve to determine approximate crude oil contamination.

11.4.2 Using the EIPs outlined in Section 10.4.2 of this appendix, determine the presence of any target aromatics. Using the integration techniques outlined in Section 10.4.2 of this appendix, obtain the EIP areas for m/z 91 and 105. Use the crude oil/drilling fluid calibration EIP linear regression curves to determine approximate crude oil contamination.

11.5 Complex Samples—

11.5.1 The most common interferences in the determination of crude oil can be from mineral oil, diesel oil, and proprietary additives in drilling fluids.

11.5.2 Mineral oil can typically be identified by its lower target aromatic content, and narrow range of strong peaks.

11.5.3 Diesel oil can typically be identified by low amounts of n-alkanes from C_7 to C_9, and the absence of n-alkanes greater than C_{25}.

11.5.4 Crude oils can usually be distinguished by the presence of high aromatics, increased intensities of C_8 to C_{13} peaks, and/ or the presence of higher hydrocarbons of C_{25} and greater (which may be difficult to see in some synthetic fluids at low contamination levels).

11.5.4.1 Oil condensates from gas wells are low in molecular weight and will normally produce strong chromatographic peaks in the C_8–C_{13} range. If a sample of the gas condensate crude oil from the formation is available, the oil can be distinguished from other potential sources of contamination by using it to prepare a calibration standard.

11.5.4.2 Asphaltene crude oils with API gravity 20 may not produce chromatographic peaks strong enough to show contamination at levels of the calibration. Extracted ion peaks should be easier to see than increased intensities for the C_8 to C_{13} peaks. If a sample of asphaltene crude from the formation is available, a calibration standard shall be prepared.

11.6 System and Laboratory Performance—

11.6.1 At the beginning of each 8-hour shift during which analyses are performed, GC crude oil/drilling fluid calibration and system performance test mixes shall be verified. For these tests, analysis of the medium-level calibration standard (1-% Reference Oil in IO Lab drilling fluid, and 1.25 mg/mL SPTM with internal standard) shall be used to verify all performance criteria. Adjustments and/or re-calibration (per Section 10 of this appendix) shall be performed until all performance criteria are met. Only after all performance criteria are met may samples and blanks be analyzed.

11.6.2 Inject 1.0 µL of the medium-level GC/MS crude oil/drilling fluid calibration standard into the GC instrument according to the procedures in Section 11.2 of this appendix. Verify that the linear regression curves for both TIC area and EIP areas are still valid using this continuing calibration standard.

11.6.3 After this analysis is complete, inject 1.0 µL of the 1.25 mg/mL SPTM (containing internal standard) into the GC instrument and verify the proper retention times are met (*see* Table 2 of this appendix).

11.6.4 Retention times—Retention time of the internal standard. The absolute retention time of the TCB internal standard shall be within the range 21.0 ± 0.5 minutes. Relative retention times of the n-alkanes: The retention times of the n-alkanes relative to the TCB internal standard shall be similar to those given in Table 2 of this appendix.

12.0 Calculations

The concentration of oil in NAFs drilling fluids shall be computed relative to peak areas between C_8 and C_{13} (using the Total Area Integration method) or total peak areas from extracted ion profiles (using the Extracted Ion Profile Method). In either case, there is a measurable amount of peak area, even in clean drilling fluid samples, due to spurious peaks and electrometer ''noise'' that contributes to the total signal measured using either of the quantification methods. In this procedure, a correction for this signal is applied, using the blank or clean sample correction technique described in American Society for Testing Materials (ASTM) Method D–3328–90, Comparison of Waterborne Oil by Gas Chromatography. In this method, the ''oil equivalents'' measured in a blank sample by total area gas chromatography are subtracted from that determined for a field sample to arrive at the most accurate measure of oil residue in the authentic sample.

12.1 Total Area Integration Method

12.1.1 Using C_8 to C_{13} TIC area, the TCB area in the clean NAF sample and the TIC linear regression curve, compute the oil equivalent concentration of the C_8 to C_{13} retention time range in the clean NAF.

Note: The actual TIC area of the C_8 to C_{13} is equal to the C_8 to C_{13} area minus the area of the TCB.

12.1.2 Using the corresponding information for the authentic sample, compute the oil equivalent concentration of the C_8 to C_{13} retention time range in the authentic sample.

12.1.3 Calculate the concentration (% oil) of oil in the sample by subtracting the oil

equivalent concentration (% oil) found in the clean NAF from the oil equivalent concentration (% oil) found in the authentic sample.

12.2 EIP Area Integration Method

12.2.1 Using either m/z 91 or 105 EIP areas, the TCB area in the clean NAF sample, and the appropriate EIP linear regression curve, compute the oil equivalent concentration of the in the clean NAF.

12.2.2 Using the corresponding information for the authentic sample, compute its oil equivalent concentration.

12.2.3 Calculate the concentration (% oil) of oil in the sample by subtracting the oil equivalent concentration (% oil) found in the clean NAF from the oil equivalent concentration (% oil) found in the authentic sample.

13.0 Method Performance

13.1 Specification in this method are adopted from EPA Method 1663, Differentiation of Diesel and Crude Oil by GC/FID (Reference 16.5).

13.2 Single laboratory method performance using an Internal Olefin (IO) drilling fluid fortified at 0.5% oil using a 35 API gravity oil was:

Precision and accuracy 94±4%
Accuracy interval—86.3% to 102%
Relative percent difference in duplicate analysis—6.2%

14.0 Pollution Prevention

14.1 The solvent used in this method poses little threat to the environment when recycled and managed properly.

15.0 Waste Management

15.1 It is the laboratory's responsibility to comply with all federal, state, and local regulations governing waste management, particularly the hazardous waste identification rules and land disposal restriction, and to protect the air, water, and land by minimizing and controlling all releases from fume hoods and bench operations. Compliance with all sewage discharge permits and regulations is also required.

15.2 All authentic samples (drilling fluids) failing the RPE (fluorescence) test (indicated by the presence of fluorescence) shall be retained and classified as contaminated samples. Treatment and ultimate fate of these samples is not outlined in this SOP.

15.3 For further information on waste management, consult ''The Waste Management Manual for Laboratory Personnel'', and ''Less is Better: Laboratory Chemical Management for Waste Reduction'', both available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street NW, Washington, DC 20036.

16.0 References

16.1 Carcinogens—''Working With Carcinogens.'' Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control (available through National Technical Information Systems, 5285 Port Royal Road, Springfield, VA 22161, document no. PB–277256): August 1977.

16.2 ''OSHA Safety and Health Standards, General Industry [29 CFR 1910], Revised.'' Occupational Safety and Health Administration, OSHA 2206. Washington, DC: January 1976.

16.3 ''Handbook of Analytical Quality Control in Water and Wastewater Laboratories.'' USEPA, EMSSL–CI, EPA–600/4–79–019. Cincinnati, OH: March 1979.

16.4 ''Method 1663, Differentiation of Diesel and Crude Oil by GC/FID, Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA 821–R–92–008, Office of Water Engineering and Analysis Division, Washington, DC: December 1992.

Appendix 6 to Subpart A of Part 435—Reverse Phase Extraction (RPE) Method for Detection of Oil Contamination in Non-Aqueous Drilling Fluids (NAF)

1.0 Scope and Application

1.1 This method is used for determination of crude or formation oil, or other petroleum oil contamination, in non-aqueous drilling fluids (NAFs).

1.2 This method is intended as a positive/negative test to determine a presence of crude oil in NAF prior to discharging drill cuttings from offshore production platforms.

1.3 This method is for use in the Environmental Protection Agency's (EPA's) survey and monitoring programs under the Clean Water Act, including monitoring of compliance with the Gulf of Mexico NPDES General Permit for monitoring of oil contamination in drilling fluids.

1.4 This method has been designed to show positive contamination for 5% of representative crude oils at a concentration of 0.1% in drilling fluid (vol/vol), 50% of representative crude oils at a concentration of 0.5%, and 95% of representative crude oils at a concentration of 1%.

1.5 Any modification of this method, beyond those expressly permitted, shall be considered a major modification subject to application and approval of alternate test procedures under 40 CFR Parts 136.4 and 136.5.

1.6 Each laboratory that uses this method must demonstrate the ability to generate acceptable results using the procedure in Section 9.2 of this appendix.

2.0 Summary of Method

2.1 An aliquot of drilling fluid is extracted using isopropyl alcohol.

2.2 The mixture is allowed to settle and then filtered to separate out residual solids.

2.3 An aliquot of the filtered extract is charged onto a reverse phase extraction (RPE) cartridge.

2.4 The cartridge is eluted with isopropyl alcohol.

2.5 Crude oil contaminates are retained on the cartridge and their presence (or absence) is detected based on observed fluorescence using a black light.

3.0 Definitions

3.1 A NAF is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhance mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).

4.0 Interferences

4.1 Solvents, reagents, glassware, and other sample-processing hardware may yield artifacts that affect results. Specific selection of reagents and purification of solvents may be required.

4.2 All materials used in the analysis shall be demonstrated to be free from interferences under the conditions of analysis by running laboratory reagent blanks as described in Section 9.5 of this appendix.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely determined; however, each chemical shall be treated as a potential health hazard. Exposure to these chemicals should be reduced to the lowest possible level. Material Safety Data Sheets (MSDSs) shall be available for all reagents.

5.2 Isopropyl alcohol is flammable and should be used in a well-ventilated area.

5.3 Unknown samples may contain high concentration of volatile toxic compounds. Sample containers should be opened in a hood and handled with gloves to prevent exposure. In addition, all sample preparation should be conducted in a well-ventilated area to limit the potential exposure to harmful contaminants. Drilling fluid samples should be handled with the same precautions used in the drilling fluid handling areas of the drilling rig.

5.4 This method does not address all safety issues associated with its use. The laboratory is responsible for maintaining a safe work environment and a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) shall be available to all personnel involved in these analyses. Additional information on laboratory safety can be found in References 16.1–16.2.

6.0 Equipment and Supplies

Note: Brand names, suppliers, and part numbers are for illustrative purposes only. No endorsement is implied. Equivalent performance may be achieved using apparatus and materials other than those specified here, but demonstration of equivalent performance that meets the requirements of this method is the responsibility of the laboratory.

6.1 Sampling equipment.

6.1.1 Sample collection bottles/jars—New, pre-cleaned bottles/jars, lot-certified to be free of artifacts. Glass preferable, plastic acceptable, wide mouth approximately 1–L, with Teflon-lined screw cap.

6.2 Equipment for glassware cleaning.

6.2.1 Laboratory sink.

6.2.2 Oven—Capable of maintaining a temperature within ±5°C in the range of 100–250 °C.

6.3 Equipment for sample extraction.

6.3.1 Vials—Glass, 25 mL and 4 mL, with Teflon-lined screw caps, baked at 200–250 °C for 1–h minimum prior to use.

6.3.2 Gas-tight syringes—Glass, various sizes, 0.5 mL to 2.5 mL (if spiking of drilling fluids with oils is to occur).

6.3.3 Auto pipetters—various sizes, 0.1 mL, 0.5 mL, 1 to 5 mL delivery, and 10 mL

delivery, with appropriate size disposable pipette tips, calibrated to within ±0.5%.

6.3.4 Glass stirring rod.

6.3.5 Vortex mixer.

6.3.6 Disposable syringes—Plastic, 5 mL.

6.3.7 Teflon syringe filter, 25-mm, 0.45µm pore size—Acrodisc® CR Teflon (or equivalent).

6.3.8 Reverse Phase Extraction C_{18} Cartridge—Waters Sep-Pak®Plus, C_{18} Cartridge, 360 mg of sorbent (or equivalent).

6.3.9 SPE vacuum manifold—Supelco Brand, 12 unit (or equivalent). Used as support for cartridge/syringe assembly only. Vacuum apparatus not required.

6.4 Equipment for fluorescence detection.

6.4.1 Black light—UV Lamp, Model UVG 11, Mineral Light Lamp, Shortwave 254 nm, or Longwave 365 nm, 15 volts, 60 Hz, 0.16 amps (or equivalent).

6.4.2 Black box—cartridge viewing area. A commercially available ultraviolet viewing cabinet with viewing lamp, or alternatively, a cardboard box or equivalent, approximately 14″×7.5″×7.5″ in size and painted flat black inside. Lamp positioned in fitted and sealed slot in center on top of box. Sample cartridges sit in a tray, ca. 6″ from lamp. Cardboard flaps cut on top panel and side of front panel for sample viewing and sample cartridge introduction, respectively.

6.4.3 Viewing platform for cartridges. Simple support (hand made vial tray—black in color) for cartridges so that they do not move during the fluorescence testing.

7.0 Reagents and Standards

7.1 Isopropyl alcohol—99% purity.

7.2 NAF—Appropriate NAF as sent from the supplier (has not been circulated downhole). Use the clean NAF corresponding to the NAF being used in the current drilling operation.

7.3 Standard crude oil—NIST SRM 1582 petroleum crude oil.

8.0 Sample Collection, Preservation, and Storage

8.1 Collect approximately one liter of representative sample (NAF, which has been circulated downhole) in a glass bottle or jar. Cover with a Teflon lined cap. To allow for a potential need to re-analyze and/or re-process the sample, it is recommended that a second sample aliquot be collected.

8.2 Label the sample appropriately.

8.3 All samples must be refrigerated at 0–4 °C from the time of collection until extraction (40 CFR Part 136, Table II).

8.4 All samples must be analyzed within 28 days of the date and time of collection (40 CFR Part 136, Table II).

9.0 Quality Control

9.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 16.3). The minimum requirements of this program consist of an initial demonstration of laboratory capability, and ongoing analyses of blanks and spiked duplicates to assess accuracy and precision and to demonstrate continued performance. Each field sample is analyzed in duplicate to demonstrate representativeness.

9.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in Section 9.2 of this appendix.

9.1.2 Preparation and analysis of a set of spiked duplicate samples to document accuracy and precision. The procedure for the preparation and analysis of these samples is described in Section 9.4 of this appendix.

9.1.3 Analyses of laboratory reagent blanks are required to demonstrate freedom from contamination. The procedure and criteria for preparation and analysis of a reagent blank are described in Section 9.5 of this appendix.

9.1.4 The laboratory shall maintain records to define the quality of the data that is generated.

9.1.5 Accompanying QC for the determination of oil in NAF is required per analytical batch. An analytical batch is a set of samples extracted at the same time, to a maximum of 10 samples. Each analytical batch of 10 or fewer samples must be accompanied by a laboratory reagent blank (Section 9.5 of this appendix), corresponding NAF reference blanks (Section 9.6 of this appendix), a set of spiked duplicate samples blank (Section 9.4 of this appendix), and duplicate analysis of each field sample. If greater than 10 samples are to be extracted at one time, the samples must be separated into analytical batches of 10 or fewer samples.

9.2 Initial demonstration of laboratory capability. To demonstrate the capability to perform the test, the analyst shall analyze two representative unused drilling fluids (e.g., internal olefin-based drilling fluid, vegetable ester-based drilling fluid), each prepared separately containing 0.1%, 1%, and 2% or a representative oil. Each drilling fluid/concentration combination shall be analyzed 10 times, and successful demonstration will yield the following average results for the data set:

0.1% oil—Detected in <20% of samples
1% oil—Detected in >75% of samples
2% oil—Detected in <90% of samples

9.3 Sample duplicates.

9.3.1 The laboratory shall prepare and analyze (Section 11.2 and 11.4 of this appendix) each authentic sample in duplicate, from a given sampling site or, if for compliance monitoring, from a given discharge.

9.3.2 The duplicate samples must be compared versus the prepared corresponding NAF blank.

9.3.3 Prepare and analyze the duplicate samples according to procedures outlined in Section 11 of this appendix.

9.3.4 The results of the duplicate analyses are acceptable if each of the results give the same response (fluorescence or no fluorescence). If the results are different, sample non-homogenicity issues may be a concern. Prepare the samples again, ensuring a well-mixed sample prior to extraction. Analyze the samples once again.

9.3.5 If different results are obtained for the duplicate a second time, the analytical system is judged to be out of control and the problem shall be identified and corrected, and the samples re-analyzed.

9.4 Spiked duplicates—Laboratory prepared spiked duplicates are analyzed to demonstrate acceptable accuracy and precision.

9.4.1 Preparation and analysis of a set of spiked duplicate samples with each set of no more than 10 field samples is required to demonstrate method accuracy and precision and to monitor matrix interferences (interferences caused by the sample matrix). A field NAF sample expected to contain less than 0.5% crude oil (and documented to not fluoresce as part of the sample batch analysis) shall be spiked with 1% (by volume) of suitable reference crude oil and analyzed as field samples, as described in Section 11 of this appendix. If no low-level drilling fluid is available, then the unused NAF can be used as the drilling fluid sample.

9.5 Laboratory reagent blanks—Laboratory reagent blanks are analyzed to demonstrate freedom from contamination.

9.5.1 A reagent blank is prepared by passing 4 mL of the isopropyl alcohol through a Teflon syringe filter and collecting the filtrate in a 4-mL glass vial. A Sep Pak® C_{18} cartridge is then preconditioned with 3 mL of isopropyl alcohol. A 0.5-mL aliquot of the filtered isopropyl alcohol is added to the syringe barrel along with 3.0 mL of isopropyl alcohol. The solvent is passed through the preconditioned Sep Pak® cartridge. An additional 2-mL of isopropyl alcohol is eluted through the cartridge. The cartridge is now considered the ''reagent blank'' cartridge and is ready for viewing (analysis). Check the reagent blank cartridge under the black light for fluorescence. If the isopropyl alcohol and filter are clean, no fluorescence will be observed.

9.5.2 If fluorescence is detected in the reagent blank cartridge, analysis of the samples is halted until the source of contamination is eliminated and a prepared reagent blank shows no fluorescence under a black light. All samples shall be associated with an uncontaminated method blank before the results may be reported for regulatory compliance purposes.

9.6 NAF reference blanks—NAF reference blanks are prepared from the NAFs sent from the supplier (NAF that has not been circulated downhole) and used as the reference when viewing the fluorescence of the test samples.

9.6.1 A NAF reference blank is prepared identically to the authentic samples. Place a 0.1 mL aliquot of the ''clean'' NAF into a 25-mL glass vial. Add 10 mL of isopropyl alcohol to the vial. Cap the vial. Vortex the vial for approximately 10 sec. Allow the solids to settle for approximately 15 minutes. Using a 5-mL syringe, draw up 4 mL of the extract and filter it through a PTFE syringe filter, collecting the filtrate in a 4-mL glass vial. Precondition a Sep Pak® C_{18} cartridge with 3 mL of isopropyl alcohol. Add a 0.5-mL aliquot of the filtered extract to the syringe barrel along with 3.0 mL of isopropyl alcohol. Pass the extract and solvent through the preconditioned Sep Pak® cartridge. Pass an additional 2-mL of isopropyl alcohol through the cartridge. The cartridge is now considered the NAF blank cartridge and is ready for viewing (analysis). This cartridge is used as the reference cartridge for determining the absence or presence of fluorescence in all authentic drilling fluid

samples that originate from the same NAF. That is, the specific NAF reference blank cartridge is put under the black light along with a prepared cartridge of an authentic sample originating from the same NAF material. The fluorescence or absence of fluorescence in the authentic sample cartridge is determined relative to the NAF reference cartridge.

9.6.2 Positive control solution, equivalent to 1% crude oil contaminated mud extract, is prepared by dissolving 87 mg of standard crude oil into 10.00 mL of methylene chloride. Then mix 40 µL of this solution into 10.00 mL of IPA. Transfer 0.5 mL of this solution into a preconditioned C18 cartridge, followed by 2 ml of IPA.

10.0 Calibration and Standardization

10.1 Calibration and standardization methods are not employed for this procedure.

11.0 Procedure

This method is a screening-level test. Precise and accurate results can be obtained only by strict adherence to all details.

11.1 Preparation of the analytical batch.

11.1.1 Bring the analytical batch of samples to room temperature.

11.1.2 Using a large glass stirring rod, mix the authentic sample thoroughly.

11.1.3 Using a large glass stirring rod, mix the clean NAF (sent from the supplier) thoroughly.

11.2 Extraction.

11.2.1 Using an automatic positive displacement pipetter and a disposable pipette tip transfer 0.1-mL of the authentic sample into a 25-mL vial.

11.2.2 Using an automatic pipetter and a disposable pipette tip dispense a 10-mL aliquot of solvent grade isopropyl alcohol (IPA) into the 25 mL vial.

11.2.3 Cap the vial and vortex the vial for ca. 10–15 seconds.

11.2.4 Let the sample extract stand for approximately 5 minutes, allowing the solids to separate.

11.2.5 Using a 5-mL disposable plastic syringe remove 4 mL of the extract from the 25-mL vial.

11.2.6 Filter 4 mL of extract through a Teflon syringe filter (25-mm diameter, 0.45 µm pore size), collecting the filtrate in a labeled 4-mL vial.

11.2.7 Dispose of the PFTE syringe filter.

11.2.8 Using a black permanent marker, label a Sep Pak® C_{18} cartridge with the sample identification.

11.2.9 Place the labeled Sep Pak® C_{18} cartridge onto the head of a SPE vacuum manifold.

11.2.10 Using a 5-mL disposable plastic syringe, draw up exactly 3-mL (air free) of isopropyl alcohol.

11.2.11 Attach the syringe tip to the top of the C_{18} cartridge.

11.2.12 Condition the C_{18} cartridge with the 3-mL of isopropyl alcohol by depressing the plunger slowly.

Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.13 Remove the syringe temporarily from the top of the cartridge, then remove the plunger, and finally reattach the syringe barrel to the top of the C_{18} cartridge.

11.2.14 Using automatic pipetters and disposable pipette tips, transfer 0.5 mL of the filtered extract into the syringe barrel, followed by a 3.0-mL transfer of isopropyl alcohol to the syringe barrel.

11.2.15 Insert the plunger and slowly depress it to pass only the extract and solvent through the preconditioned C_{18} cartridge.

Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.16 Remove the syringe temporarily from the top of the cartridge, then remove the plunger, and finally reattach the syringe barrel to the top of the C_{18} cartridge.

11.2.17 Using an automatic pipetter and disposable pipette tip, transfer 2.0 mL of isopropyl alcohol to the syringe barrel.

11.2.18 Insert the plunger and slowly depress it to pass the solvent through the C_{18} cartridge.

Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.19 Remove the syringe and labeled C_{18} cartridge from the top of the SPE vacuum manifold.

11.2.20 Prepare a reagent blank according to the procedures outlined in Section 9.5 of this appendix.

11.2.21 Prepare the necessary NAF reference blanks for each type of NAF encountered in the field samples according to the procedures outlined in Section 9.6 of this appendix.

11.2.22 Prepare the positive control (1% crude oil equivalent) according to Section 9.6.2 of this appendix.

11.3 Reagent blank fluorescence testing.

11.3.1 Place the reagent blank cartridge in a black box, under a black light.

11.3.2 Determine the presence or absence of fluorescence for the reagent blank cartridge. If fluorescence is detected in the blank, analysis of the samples is halted until the source of contamination is eliminated and a prepared reagent blank shows no fluorescence under a black light. All samples must be associated with an uncontaminated method blank before the results may be reported for regulatory compliance purposes.

11.4 Sample fluorescence testing.

11.4.1 Place the respective NAF reference blank (Section 9.6 of this appendix) onto the tray inside the black box.

11.4.2 Place the authentic field sample cartridge (derived from the same NAF as the NAF reference blank) onto the tray, adjacent and to the right of the NAF reference blank.

11.4.3 Turn on the black light.

11.4.4 Compare the fluorescence of the sample cartridge with that of the negative control cartridge (NAF blank, Section 9.6.1 of this appendix) and positive control cartridge (1% crude oil equivalent, Section 9.6.2 of this appendix).

11.4.5 If the fluorescence of the sample cartridge is equal to or brighter than the positive control cartridge (1% crude oil equivalent, Section 9.6.2 of this appendix), the sample is considered contaminated. Otherwise, the sample is clean.

12.0 Data Analysis and Calculations

Specific data analysis techniques and calculations are not performed in this SOP.

13.0 Method Performance

This method was validated through a single laboratory study, conducted with rigorous statistical experimental design and interpretation (Reference 16.4).

14.0 Pollution Prevention

14.1 The solvent used in this method poses little threat to the environment when recycled and managed properly.

15.0 Waste Management

15.1 It is the laboratory's responsibility to comply with all Federal, State, and local regulations governing waste management, particularly the hazardous waste identification rules and land disposal restriction, and to protect the air, water, and land by minimizing and controlling all releases from bench operations. Compliance with all sewage discharge permits and regulations is also required.

15.2 All authentic samples (drilling fluids) failing the fluorescence test (indicated by the presence of fluorescence) shall be retained and classified as contaminated samples. Treatment and ultimate fate of these samples is not outlined in this SOP.

15.3 For further information on waste management, consult ''The Waste Management Manual for Laboratory Personnel,'' and ''Less is Better: Laboratory Chemical Management for Waste Reduction,'' both available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street, NW, Washington, DC 20036.

16.0 References

16.1 ''Carcinogen—Working with Carcinogens,'' Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, Publication No. 77–206, August 1977.

16.2 ''OSHA Safety and Health Standards, General Industry,'' (29 CFR 1910), Occupational Safety and Health Administration, OSHA 2206 (Revised, January 1976).

16.3 ''Handbook of Analytical Quality Control in Water and Wastewater Laboratories,'' USEPA, EMSL-Ci, Cincinnati, OH 45268, EPA–600/4–79–019, March 1979.

16.4 Report of the Laboratory Evaluation of Static Sheen Test Replacements—Reverse Phase Extraction (RPE) Method for Detecting Oil Contamination in Synthetic Based Mud (SBM). October 1998. Available from API, 1220 L Street, NW, Washington, DC 20005–4070, 202–682–8000.

Appendix 7 to Subpart A of Part 435—API Recommended Practice 13B–2

1. Description

a. This procedure is specifically intended to measure the amount of non-aqueous drilling fluid (NAF) base fluid from cuttings generated during a drilling operation. This procedure is a retort test which measures all oily material (NAF base fluid) and water released from a cuttings sample when heated

in a calibrated and properly operating ''Retort'' instrument.

b. In this retort test a known mass of cuttings is heated in the retort chamber to vaporize the liquids associated with the sample. The NAF base fluid and water vapors are then condensed, collected, and measured in a precision graduated receiver.

Note: Obtaining a representative sample requires special attention to the details of sample handling (e.g., location, method, frequency). See Addendum A and B for minimum requirements for collecting representative samples. Additional sampling procedures in a given area may be specified by the NPDES permit controlling authority.

2. Equipment

a. Retort instrument—The recommended retort instrument has a 50-cm^3 volume with an external heating jacket.

Retort Specifications:

1. Retort assembly—retort body, cup and lid.

(a) Material: 303 stainless steel or equivalent.

(b) Volume: Retort cup with lid.

Cup Volume: 50-cm^3.

Precision: ±0.25-cm^3.

2. Condenser—capable of cooling the oil and water vapors below their liquification temperature.

3. Heating jacket—nominal 350 watts.

4. Temperature control—capable of limiting temperature of retort to at least 930 °F (500 °C) and enough to boil off all NAFs.

b. Liquid receiver (10-cm^3, 20-cm^3)—the 10-cm^3 and 20-cm^3 receivers are specially designed cylindrical glassware with rounded bottom to facilitate cleaning and funnel-shaped top to catch falling drops. For compliance monitoring under the NPDES program, the analyst shall use the 10-cm^3 liquid receiver with 0.1 ml graduations to achieve greater accuracy.

1. Receiver specifications:

Total volume: 10-cm^3, 20-cm^3.

Precision (0 to 100%): ±0.05 cm^3, ±0.05 cm^3.

Outside diameter: 10-mm, 13-mm.

Wall thickness: 1.5±0.1mm, 1.2±0.1mm.

Frequency of graduation marks (0 to 100%): 0.10-cm^3, 0.10-cm^3.

Calibration: To contain ''TC'' @ 20°C.

Scale: cm^3, cm^3

2. Material—Pyrex® or equivalent glass.

c. Toploading balance—capable of weighing 2000 g and precision of at least 0.1 g. Unless motion is a problem, the analyst shall use an electronic balance. Where motion is a problem, the analyst may use a triple beam balance.

d. Fine steel wool (No. 000)—for packing retort body.

e. Thread sealant lubricant: high temperature lubricant, e.g. Never-Seez® or equivalent.

f. Pipe cleaners—to clean condenser and retort stem.

g. Brush—to clean receivers.

h. Retort spatula—to clean retort cup.

i. Corkscrew—to remove spent steel wool.

3. Procedure

a. Clean and dry the retort assembly and condenser.

b. Pack the retort body with steel wool.

c. Apply lubricant/sealant to threads of retort cup and retort stem.

d. Weigh and record the total mass of the retort cup, lid, and retort body with steel wool. This is mass (A), grams.

e. Collect a representative cuttings sample (*see* **Note** in Section 1 of this appendix).

f. Partially fill the retort cup with cuttings and place the lid on the cup.

g. Screw the retort cup (with lid) onto the retort body, weigh and record the total mass. This is mass (B), grams.

h. Attach the condenser. Place the retort assembly into the heating jacket.

i. Weigh and record the mass of the clean and dry liquid receiver. This is mass (C), grams. Place the receiver below condenser outlet.

j. Turn on the retort. Allow it to run a minimum of 1 hour.

Note: If solids boil over into receiver, the test shall be rerun. Pack the retort body with a greater amount of steel wool and repeat the test.

k. Remove the liquid receiver. Allow it to cool. Record the volume of water recovered. This is (V), cm^3.

Note: If an emulsion interface is present between the oil and water phases, heating the interface may break the emulsion. As a suggestion, remove the retort assembly from the heating jacket by grasping the condenser. Carefully heat the receiver along the emulsion band by gently touching the receiver for short intervals with the hot retort assembly. Avoid boiling the liquids. After the emulsion interface is broken, allow the liquid receiver to cool. Read the water volume at the lowest point of the meniscus.

l. Weigh and record the mass of the receiver and its liquid contents (oil plus water). This is mass (D), grams.

m. Turn off the retort. Remove the retort assembly and condenser from the heating jacket and allow them to cool. Remove the condenser.

n. Weigh and record the mass of the cooled retort assembly without the condenser. This is mass (E), grams.

o. Clean the retort assembly and condenser.

4. Calculations

a. Calculate the mass of oil (NAF base fluid) from the cuttings as follows:

1. Mass of the wet cuttings sample (M_w) equals the mass of the retort assembly with the wet cuttings sample (B) minus the mass of the empty retort assembly (A).

$$M_w = B - A \quad [1]$$

2. Mass of the dry retorted cuttings (M_D) equals the mass of the cooled retort assembly (E) minus the mass of the empty retort assembly (A).

$$M_D = E - A \quad [2]$$

3. Mass of the NAF base fluid (M_{BF}) equals the mass of the liquid receiver with its contents (D) minus the sum of the mass of the dry receiver (C) and the mass of the water (V).

$$M_{BF} = D - (C + V) \quad [3]$$

Note: Assuming the density of water is 1 g/cm^3, the volume of water is equivalent to the mass of the water.

b. Mass balance requirement:

The sum of M_D, M_{BF}, and V shall be within 5% of the mass of the wet sample.

$$(M_D + M_{BF} + V)/M_w = 0.95 \text{ to } 1.05 \quad [4]$$

The procedure shall be repeated if this requirement is not met.

c. Reporting oil from cuttings:

1. Assume that all oil recovered is NAF base fluid.

2. The mass percent NAF base fluid retained on the cuttings (%BF_i) for the sampled discharge ''i'' is equal to 100 times the mass of the NAF base fluid (M_{BF}) divided by the mass of the wet cuttings sample (M_w).

$$\%BF_i = (M_{BF}/M_w) \times 100 \quad [5]$$

Operators discharging small volume NAF-cuttings discharges which do not occur during a NAF-cuttings discharge sampling interval (i.e., displaced interfaces, accumulated solids in sand traps, pit clean-out solids, or centrifuge discharges while cutting mud weight) shall either: (a) Measure the mass percent NAF base fluid retained on the cuttings (%BF_{SVD}) for each small volume NAF-cuttings discharges; or (b) use a default value of 25% NAF base fluid retained on the cuttings.

3. The mass percent NAF base fluid retained on the cuttings is determined for all cuttings wastestreams and includes fines discharges and any accumulated solids discharged [*see* Section 4.c.6 of this appendix for procedures on measuring or estimating the mass percent NAF base fluid retained on the cuttings (%BF) for dual gradient drilling seafloor discharges performed to ensure proper operation of subsea pumps].

4. A mass NAF-cuttings discharge fraction (X, unitless) is calculated for all NAF-cuttings, fines, or accumulated solids discharges every time a set of retorts is performed (*see* Section 4.c.6 of this appendix for procedures on measuring or estimating the mass NAF-cuttings discharge fraction (X) for dual gradient drilling seafloor discharges performed to ensure proper operation of subsea pumps). The mass NAF-cuttings discharge fraction (X) combines the mass of NAF-cuttings, fines, or accumulated solids discharged from a particular discharge over a set period of time with the total mass of NAF-cuttings, fines, or accumulated solids discharged into the ocean during the same period of time (*see* Addendum A and B of this appendix). The mass NAF-cuttings discharge fraction (X) for each discharge is calculated by direct measurement as:

$$X_i = (F_i)/(G) \quad [6]$$

where:

X_i = Mass NAF-cuttings discharge fraction for NAF-cuttings, fines, or accumulated solids discharge ''i'', (unitless)

F_i = Mass of NAF-cuttings discharged from NAF-cuttings, fines, or accumulated solids discharge ''i'' over a specified period of time (*see* Addendum A and B of this appendix), (kg)

G = Mass of all NAF-cuttings discharges into the ocean during the same period of time as used to calculate F_i, (kg)

If an operator has more than one point of NAF-cuttings discharge, the mass faction (X_i) must be determined by: (a) Direct measurement (*see* Equation 6 of this

Appendix); (b) using the following default values of 0.85 and 0.15 for the cuttings dryer (e.g., horizontal centrifuge, vertical centrifuge, squeeze press, High-G linear shakers) and fines removal unit (e.g., decanting centrifuges, mud cleaners), respectively, when the operator is only discharging from the cuttings dryer and the fines removal unit; or (c) using direct measurement of ''F_i'' (*see* Equation 6 of this Appendix) for fines and accumulated solids, using Equation 6A of this Appendix to calculate ''G_{EST}'' for use as ''G'' in Equation 6 of this Appendix, and calculating the mass (kg) of NAF-cuttings discharged from the cuttings dryer (F_i) as the difference between the mass of ''G_{EST}'' calculated in Equation 6A of this appendix (kg) and the sum of all fines and accumulated solids mass directly measured (kg) (*see* Equation 6 of this Appendix).

G_{EST} = Estimated mass of all NAF-cuttings discharges into the ocean during the same period of time as used to calculate F_i (*see* Equation 6 of this Appendix), (kg) [6A]

where:

G_{EST} = Hole Volume (bbl) × (396.9 kg/bbl) × (1 + Z/100)

Z = The base fluid retained on cuttings limitation or standard (%) which apply to the NAF being discharge (*see* §§ 435.13. and 435.15).

Hole Volume (bbl) = [Cross-Section Area of NAF interval (in^2)] × Average Rate of Penetration (feet/hr) × period of time (min) used to calculate F_i (*see* Equation 6 of this Appendix) × (1 hr/60 min) × (1 bbl/5.61 ft^3) × (1 ft/12 in)^2

Cross-Section Area of NAF interval (in^2) = (3.14 × [Bit Diameter (in)]^2)/4

Bit Diameter (in) = Diameter of drilling bit for the NAF interval producing drilling cuttings during the same period of time as used to calculate F_i (*see* Equation 6 of this Appendix)

Average Rate of Penetration (feet/hr) = Arithmetic average of rate of penetration into the formation during the same period of time as used to calculate F_i (*see* Equation 6 of this Appendix)

Note: Operators with one NAF-cuttings discharge may set the mass NAF-cuttings discharge fraction (X_i) equal to 1.0.

5. Each NAF-cuttings, fines, or accumulated solids discharge has an associated mass percent NAF base fluid retained on cuttings value (%BF) and mass NAF-cuttings discharge fraction (X) each time a set of retorts is performed. A single total mass percent NAF base fluid retained on cuttings value ($\%BF_T$) is calculated every time a set of retorts is performed. The single total mass percent NAF base fluid retained on cuttings value ($\%BF_T$) is calculated as:

$$\%BF_{T,j} = \Sigma(X_i) \times (\%BF_i) \quad [7]$$

where:

$\%BF_{T,j}$ = Total mass percent NAF base fluid retained on cuttings value for retort set ''j'' (unitless as percentage, %)

X_i = Mass NAF-cuttings discharge fraction for NAF-cuttings, fines, or accumulated solids discharge ''i'', (unitless)

$\%BF_i$ = Mass percent NAF base fluid retained on the cuttings for NAF-cuttings, fines, or accumulated solids discharge ''i'' , (unitless as percentage, %)

Note: $\Sigma X_i = 1$.

Operators with one NAF-cuttings discharge may set $\%BF_{T,j}$ equal to $\%BF_i$.

6. Operators performing dual gradient drilling operations may require seafloor discharges of large cuttings (>¼″) to ensure the proper operation of subsea pumps (e.g., electrical submersible pumps). Operators performing dual gradient drilling operations which lead to seafloor discharges of large cuttings for the proper operation of subsea pumps shall either: (a) Measure the mass percent NAF base fluid retained on cuttings value (%BF) and mass NAF-cuttings discharge fraction (X) for seafloor discharges each time a set of retorts is performed; (b) use the following set of default values, (%BF=14%; X=0.15); or (c) use a combination of (a) and (b) (e.g., use a default value for %BF and measure X).

Additionally, operators performing dual gradient drilling operations which lead to seafloor discharges of large cuttings for the proper operation of subsea pumps shall also perform the following tasks:

(a) Use side scan sonar or shallow seismic to determine the presence of high density chemosynthetic communities. Chemosynthetic communities are assemblages of tube worms, clams, mussels, and bacterial mats that occur at natural hydrocarbon seeps or vents, generally in water depths of 500 meters or deeper. Seafloor discharges of large cuttings for the proper operation of subsea pumps shall not be permitted within 1000 feet of a high density chemosynthetic community.

(b) Seafloor discharges of large cuttings for the proper operation of subsea pumps shall be visually monitored and documented by a Remotely Operated Vehicle (ROV) within the tether limit (approximately 300 feet). The visual monitoring shall be conducted prior to each time the discharge point is relocated (cuttings discharge hose) and conducted along the same direction as the discharge hose position. Near-seabed currents shall be obtained at the time of the visual monitoring.

(c) Seafloor discharges of large cuttings for the proper operation of subsea pumps shall be directed within a 150 foot radius of the wellbore.

7. The weighted mass ratio averaged over all NAF well sections ($\%BF_{well}$) is the compliance value that is compared with the ''maximum weighted mass ratio averaged over all NAF well sections'' BAT discharge limitations (*see* the table in § 435.13 and footnote 5 of the table in § 435.43) or the ''maximum weighted mass ratio averaged over all NAF well sections'' NSPS discharge limitations (*see* the table in § 435.15 and footnote 5 of the table in § 435.45). The weighted mass ratio averaged over all NAF well sections ($\%BF_{well}$) is calculated as the arithmetic average of all total mass percent NAF base fluid retained on cuttings values ($\%BF_T$) and is given by the following expression:

$$\%BF_{well} = [j=1 \text{ to } j=n\ \Sigma\ (\%BF_{T,j})]/n \quad [8]$$

where:

$\%BF_{well}$ = Weighted mass ratio averaged over all NAF well sections (unitless as percentage, %)

$\%BF_{T,j}$ = Total mass percent NAF base fluid retained on cuttings value for retort set ''j'' (unitless as percentage, %)

n = Total number of retort sets performed over all NAF well sections (unitless)

Small volume NAF-cuttings discharges which do not occur during a NAF-cuttings discharge sampling interval (i.e., displaced interfaces, accumulated solids in sand traps, pit clean-out solids, or centrifuge discharges while cutting mud weight) shall be mass averaged with the arithmetic average of all total mass percent NAF base fluid retained on cuttings values (see Equation 8 of this Appendix). An additional sampling interval shall be added to the calculation of the weighted mass ratio averaged over all NAF well sections ($\%BF_{well}$). The mass fraction of the small volume NAF-cuttings discharges (X_{SVD}) will be determined by dividing the mass of the small volume NAF-cuttings discharges (F_{SVD}) by the total mass of NAF-cuttings discharges for the well drilling operation ($G_{WELL} + F_{SVD}$).

$$X_{SVD} = F_{SVD} / (G_{WELL} + F_{SVD}) \quad [9]$$

where:

X_{SVD} = mass fraction of the small volume NAF-cuttings discharges (unitless)

F_{SVD} = mass of the small volume NAF-cuttings discharges (kg)

G_{WELL} = mass of total NAF-cuttings from the well (kg)

The mass of small volume NAF-cuttings discharges (F_{SVD}) shall be determined by multiplying the density of the small volume NAF-cuttings discharges (ρ_{svd}) times the volume of the small volume NAF-cuttings discharges (V_{SVD}).

$$F_{SVD} = \rho_{svd} \times V_{SVD} \quad [10]$$

where:

F_{SVD} = mass of small volume NAF-cuttings discharges (kg)

ρ_{svd} = density of the small volume NAF-cuttings discharges (kg/bbl)

V_{SVD} = volume of the small volume NAF-cuttings discharges (bbl)

The density of the small volume NAF-cuttings discharges shall be measured. The volume of small volume discharges (V_{SVD}) shall be either: (a) Be measured or (b) use default values of 10 bbl of SBF for each interface loss and 75 bbl of SBM for pit cleanout per well.

The total mass of NAF-cuttings discharges for the well (G_{WELL}) shall be either: (a) Measured; or (b) calculated by multiplying 1.0 plus the arithmetic average of all total mass percent NAF base fluid retained on cuttings values [see Equation 8 of this Appendix] times the total hole volume (V_{WELL}) for all NAF well sections times a default value for the density the formation of 2.5 g/cm^3 (396.9 kg/bbl).

$$G_{WELL} = \left(1 + \left(\left[i = 1 \text{ to } j = n \sum \left(\%BF_{Tj}\right)\right]/n\right)\right) \times V_{WELL}\,(bbl) \times 396.9\ (kg/bbl) \qquad [11]$$

where:

G_{WELL} = total mass of NAF-cuttings discharges for the well (kg)
$[j = 1 \text{ to } j = n\ \Sigma 2(\%BF_{Tj})]/n$ = see Equation 8 of this Appendix (unitless as a percentage)
V_{WELL} = total hole volume (V_{WELL}) for all NAF well sections (bbl)

The total hole volume of NAF well sections (V_{WELL}) will be calculated as:

$$V_{WELL}\,(\text{barrels}) = \sum \frac{\text{Bit diameter (in)}^2}{1029} \times \text{change in measured depth (ft)} \qquad [12]$$

For wells where small volume discharges associated with cuttings are made, $\%BF_{WELL}$ becomes:

$$\%BF_{WELL} = \left(\left(1 - X_{SVD}\right) \times \left[i = 1 \text{ to } j = n \sum \left(\%BF_{Tj}\right)\right]/n\right) + X_{SVD} \times \%BF_{SVD} \qquad [13]$$

Note: See Addendum A and B to determine the sampling frequency to determine the total number of retort sets required for all NAF well sections.

8. The total number of retort sets (n) is increased by 1 for each sampling interval (*see* Section 2.4, Addendum A of this appendix) when all NAF cuttings, fines, or accumulated solids for that sampling interval are retained for no discharge. A zero discharge interval shall be at least 500 feet up to a maximum of three per day. This action has the effect of setting the total mass percent NAF base fluid retained on cuttings value ($\%BF_T$) at zero for that NAF sampling interval when all NAF cuttings, fines, or accumulated solids are retained for no discharge.

9. Operators that elect to use the Best Management Practices (BMPs) for NAF-cuttings shall use the procedures outlined in Addendum B.

Addendum A to Appendix 7 to Subpart A of Part 435—Sampling of Cuttings Discharge Streams for use with API Recommended Practice 13B–2

1.0 Sampling Locations

1.1 Each NAF-cuttings waste stream that discharges into the ocean shall be sampled and analyzed as detailed in Appendix 7. NAF-cuttings discharges to the ocean may include discharges from primary shakers, secondary shakers, cuttings dryer, fines removal unit, accumulated solids, and any other cuttings separation device whose NAF-cuttings waste is discharged to the ocean. NAF-cuttings wastestreams not directly discharged to the ocean (*e.g.,* NAF-cuttings generated from shake shakers and sent to a cuttings dryer for additional processing) do not require sampling and analysis.

1.2 The collected samples shall be representative of each NAF-cuttings discharge. Operators shall conduct sampling to avoid the serious consequences of error (*i.e.,* bias or inaccuracy). Operators shall collect NAF-cuttings samples near the point of origin and before the solids and liquid fractions of the stream have a chance to separate from one another. For example, operators shall collect shale shaker NAF-cuttings samples at the point where NAF-cuttings are coming off the shale shaker and not from a holding container downstream where separation of larger particles from the liquid can take place.

1.3 Operators shall provide a simple schematic diagram of the solids control system and sample locations to the NPDES permit controlling authority.

2.0 Type of Sample and Sampling Frequency

2.1 Each NAF-cuttings, fines, or accumulated solids discharge has an associated mass percent NAF base fluid retained on cuttings value (%BF) and mass NAF-cuttings discharge fraction (X) for each sampling interval (*see* Section 2.4 of this addendum). Operators shall collect a single discrete NAF-cuttings sample for each NAF-cuttings waste stream discharged to the ocean during every sampling interval.

2.2 Operators shall use measured depth in feet from the Kelly bushing when samples are collected.

2.3 The NAF-cuttings samples collected for the mass fraction analysis (*see* Equation 6, Appendix 7 of Subpart A of this part) shall also be used for the retort analysis (*see* Equations 1–5, Appendix 7 of Subpart A of this part).

2.4 Operators shall collect and analyze at least one set of NAF-cuttings samples per day while discharging. Operators engaged in fast drilling (*i.e.,* greater than 500 linear NAF feet advancement of drill bit per day) shall collect and analyze one set of NAF-cuttings samples per 500 linear NAF feet of footage drilled. Operators are not required to collect and analyze more than three sets of NAF-cuttings samples per day (*i.e.,* three sampling intervals). Operators performing zero discharge of all NAF-cuttings (*i.e.,* all NAF cuttings, fines, or accumulated solids retained for no discharge) shall use the following periods to count sampling intervals: (1) One sampling interval per day when drilling is less than 500 linear NAF feet advancement of drill bit per day; and (2) one sampling interval per 500 linear NAF feet of footage drilled with a maximum of three sampling intervals per day.

2.5 The operator shall measure the individual masses (F_i, kg) and sum total mass (G, kg) (*see* Equation 6, Appendix 7 of subpart A of this part) over a representative period of time (*e.g.,* <10 minutes) during steady-state conditions for each sampling interval (*see* Section 2.4 of this addendum). The operator shall ensure that all NAF-cuttings are capture for mass analysis during the same sampling time period (*e.g.,* <10 minutes) at approximately the same time (*i.e.,* all individual mass samples collected within one hour of each other).

2.6 Operators using Best Management Practices (BMPs) to control NAF-cuttings discharges shall follow the procedures in Addendum B to Appendix 7 of subpart A of 40 CFR 435.

3.0 Sample Size and Handling

3.1 The volume of each sample depends on the volumetric flow rate (cm^3/s) of the NAF-cuttings stream and the sampling time period (*e.g.,* <10 minutes). Consequently, different solids control equipment units producing different NAF-cuttings waste streams at different volumetric flow rates will produce different size samples for the same period of time. Operators shall use appropriately sized sample containers for each NAF-cuttings waste stream to ensure no NAF-cuttings are spilled during sample collection. Operators shall use the same time period (*e.g.,* <10 minutes) to collect NAF-cuttings samples from each NAF-cuttings waste stream. Each NAF-cuttings sample size shall be at least one gallon. Operators shall clearly mark each container to identify each NAF-cuttings sample.

3.2 Operators shall not decant, heat, wash, or towel the NAF-cuttings to remove NAF base fluid before mass and retort analysis.

3.3 Operators shall first calculate the mass of each NAF-cuttings sample and perform the mass ratio analysis (*see* Equation 6, Appendix 7 of subpart A of this part). Operators with only one NAF-cuttings discharge may skip this step (*see* Section 4.c.4, Appendix 7 of subpart A of this part).

3.4 Operators shall homogenize (*e.g.,* stirring, shaking) each NAF-cuttings sample prior to placing a sub-sample into the retort cup. The bottom of the NAF-cuttings sample container shall be examined to be sure that solids are not sticking to it.

3.5 Operators shall then calculate the NAF base fluid retained on cuttings using the retort procedure (*see* Equations 1–5, Appendix 7 of subpart A of this part). Operators shall start the retort analyses no more than two hours after collecting the first individual mass sample for the sampling interval .

3.6 Operators shall not discharge any sample before successfully completing the mass and retort analyses [i.e., mass balance

requirements (*see* Section 4.b, Appendix 7 of subpart A of this part) are satisfied]. Operators shall immediately re-run the retort analyses if the mass balance requirements (*see* Equation 4, Appendix 7 of subpart A of this part) are not within a tolerance of 5% (*see* Section 4.b, Equation 4, Appendix 7 of subpart A of this part).

4.0 Calculations

4.1 Operators shall calculate a set of mass percent NAF base fluid retained on cuttings values (%BF) and mass NAF-cuttings discharge fractions (X) for each NAF-cuttings waste stream (*see* Section 1.1 of this addendum) for each sampling interval (*see* Section 2.4 of this addendum) using the procedures outlined in Appendix 7 of subpart A of this part.

4.2 Operators shall tabulate the following data for each individual NAF-cuttings sample: (1) Date and time of NAF-cuttings sample collection; (2) time period of NAF-cuttings sample collection (*see* Section 3.1 of this addendum); (3) mass and volume of each NAF-cuttings sample; (4) measured depth (feet) at NAF-cuttings sample collection (*see* Section 2.2 of this addendum); (5) respective linear feet of hole drilled represented by the NAF-cuttings sample (feet); and (6) the drill bit diameter (inches) used to generate the NAF-cuttings sample cuttings.

4.3 Operators shall calculate a single total mass percent NAF base fluid retained on cuttings value ($\%BF_T$) for each sampling interval (*see* Section 2.4 of this addendum) using the procedures outlined in Appendix 7 of Subpart A of this part.

4.4 Operators shall tabulate the following data for each total mass percent NAF base fluid retained on cuttings value ($\%BF_T$) for each NAF-cuttings sampling interval: (1) Date and starting and stopping times of NAF-cuttings sample collection and retort analyses; (2) measured depth of well (feet) at start of NAF-cuttings sample collection (*see* Section 2.2 of this addendum); (3) respective linear feet of hole drilled represented by the NAF-cuttings sample (feet); (4) the drill bit diameter (inches) used to generate the NAF-cuttings sample cuttings; and (5) annotation when zero discharge of NAF-cuttings is performed.

4.5 Operators shall calculate the weighted mass ratio averaged over all NAF well sections ($\%BF_{well}$) using the procedures outlined in Appendix 7 of Subpart A of this part.

4.6 Operators shall tabulate the following data for each weighted mass ratio averaged over all NAF well sections ($\%BF_{well}$) for each NAF well: (1) Starting and stopping dates of NAF well sections; (2) measured depth (feet) of all NAF well sections; (3) total number of sampling intervals (*see* Section 2.4 and Section 2.6 of this addendum); (4) number of sampling intervals tabulated during any zero discharge operations; (5) total volume of zero discharged NAF-cuttings over entire NAF well sections; and (6) identification of whether BMPs were employed (*see* Addendum B of Appendix 7 of subpart A of this part).

Addendum B to Appendix 7 to Subpart A of Part 435— Best Management Practices (BMPs) for use with API Recommended Practice 13B–2

1.0 Overview of BMPs

1.1 Best Management Practices (BMPs) are inherently pollution prevention practices. BMPs may include the universe of pollution prevention encompassing production modifications, operational changes, material substitution, materials and water conservation, and other such measures. BMPs include methods to prevent toxic and hazardous pollutants from reaching receiving waters. Because BMPs are most effective when organized into a comprehensive facility BMP Plan, operators shall develop a BMP in accordance with the requirements in this addendum.

1.2 The BMP requirements contained in this appendix were compiled from several Regional permits, an EPA guidance document (i.e., Guidance Document for Developing Best Management Practices (BMP)'' (EPA 833–B–93–004, U.S. EPA, 1993)), and draft industry BMPs. These common elements represent the appropriate mix of broad directions needed to complete a BMP Plan along with specific tasks common to all drilling operations.

1.3 Operators are not required to use BMPs if all NAF-cuttings discharges are monitored in accordance with Appendix 7 of Subpart A of this part.

2.0 BMP Plan Purpose and Objectives

2.1 Operators shall design the BMP Plan to prevent or minimize the generation and the potential for the discharge of NAF from the facility to the waters of the United States through normal operations and ancillary activities. The operator shall establish specific objectives for the control of NAF by conducting the following evaluations.

2.2 The operator shall identify and document each NAF well that uses BMPs before starting drilling operations and the anticipated total feet to be drilled with NAF for that particular well.

2.3 Each facility component or system controlled through use of BMPs shall be examined for its NAF-waste minimization opportunities and its potential for causing a discharge of NAF to waters of the United States due to equipment failure, improper operation, natural phenomena (e.g., rain, snowfall).

2.4 For each NAF wastestream controlled through BMPs where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in NAF reaching surface waters, the BMP Plan shall include a prediction of the total quantity of NAF which could be discharged from the facility as a result of each condition or circumstance.

3.0 BMP Plan Requirements

3.1 The BMP Plan may reflect requirements within the pollution prevention requirements required by the Minerals Management Service (*see* 30 CFR 250.300) or other Federal or State requirements and incorporate any part of such plans into the BMP Plan by reference.

3.2 The operator shall certify that its BMP Plan is complete, on-site, and available upon request to EPA or the NPDES Permit controlling authority. This certification shall identify the NPDES permit number and be signed by an authorized representative of the operator. This certification shall be kept with the BMP Plan. For new or modified NPDES permits, the certification shall be made no later than the effective date of the new or modified permit. For existing NPDES permits, the certification shall be made within one year of permit issuance.

3.3 The BMP Plan shall:

3.3.1 Be documented in narrative form, and shall include any necessary plot plans, drawings or maps, and shall be developed in accordance with good engineering practices. At a minimum, the BMP Plan shall contain the planning, development and implementation, and evaluation/reevaluation components. Examples of these components are contained in ''Guidance Document for Developing Best Management Practices (BMP)'' (EPA 833–B–93–004, U.S. EPA, 1993).

3.3.2 Include the following provisions concerning BMP Plan review.

3.3.2.1 Be reviewed by permittee's drilling engineer and offshore installation manager (OIM) to ensure compliance with the BMP Plan purpose and objectives set forth in Section 2.0.

3.3.2.2 Include a statement that the review has been completed and that the BMP Plan fulfills the BMP Plan purpose and objectives set forth in Section 2.0. This statement shall have dated signatures from the permittee's drilling engineer and offshore installation manager and any other individuals responsible for development and implementation of the BMP Plan.

3.4 Address each component or system capable of generating or causing a release of significant amounts of NAF and identify specific preventative or remedial measures to be implemented.

4.0 BMP Plan Documentation

4.1 The operator shall maintain a copy of the BMP Plan and related documentation (e.g., training certifications, summary of the monitoring results, records of NAF-equipment spills, repairs, and maintenance) at the facility and shall make the BMP Plan and related documentation available to EPA or the NPDES Permit controlling authority upon request.

5.0 BMP Plan Modification

5.1 For those NAF wastestreams controlled through BMPs, the operator shall amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of those NAF-wastes or their release or potential release to the receiving waters.

5.2 At a minimum the BMP Plan shall be reviewed once every five years and amended within three months if warranted. Any such changes to the BMP Plan shall be consistent with the objectives and specific requirements listed in this addendum. All changes in the BMP Plan shall be reviewed by the permittee's drilling engineer and offshore installation manager.

5.3 At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of NAF-wastes and their release and potential release to the receiving waters and/or the specific requirements in this addendum, the permit and/or the BMP Plan shall be subject to modification to incorporate revised BMP requirements.

6.0 Specific Pollution Prevention Requirements for NAF Discharges Associated with Cuttings

6.1 The following specific pollution prevention activities are required in a BMP Plan when operators elect to control NAF discharges associated with cuttings by a set of BMPs.

6.2 Establishing programs for identifying, documenting, and repairing malfunctioning NAF equipment, tracking NAF equipment repairs, and training personnel to report and evaluate malfunctioning NAF equipment.

6.3 Establishing operating and maintenance procedures for each component in the solids control system in a manner consistent with the manufacturer's design criteria.

6.4 Using the most applicable spacers, flushes, pills, and displacement techniques in order to minimize contamination of drilling fluids when changing from water-based drilling fluids to NAF and vice versa.

6.5 A daily retort analysis shall be performed (in accordance with Appendix 7 to subpart A of Part 435) during the first 0.33 X feet drilled with NAF where X is the anticipated total feet to be drilled with NAF for that particular well. The retort analyses shall be documented in the well retort log. The operators shall use the calculation procedures detailed in Appendix 7 to subpart A of part 435 (*see* Equations 1 through 8) to determine the arithmetic average ($\%BF_{well}$) of the retort analyses taken during the first 0.33 X feet drilled with NAF.

6.5.1 When the arithmetic average ($\%BF_{well}$) of the retort analyses taken during the first 0.33 X feet drilled with NAF is less than or equal to the base fluid retained on cuttings limitation or standard (*see* §§ 435.13 and 435.15), retort monitoring of cuttings may cease for that particular well. The same BMPs and drilling fluid used during the first 0.33 X feet shall be used for all remaining NAF sections for that particular well.

6.5.2 When the arithmetic average ($\%BF_{well}$) of the retort analyses taken during the first 0.33 X feet drilled with NAF is greater the base fluid retained on cuttings limitation or standard (*see* §§ 435.13 and 435.15), retort monitoring shall continue for the following (second) 0.33 X feet drilled with NAF where X is the anticipated total feet to be drilled with NAF for that particular well. The retort analyses for the first and second 0.33 X feet shall be documented in the well retort log.

6.5.2.1 When the arithmetic average ($\%BF_{well}$) of the retort analyses taken during the first 0.66 X feet (i.e., retort analyses taken from first and second 0.33 X feet) drilled with NAF is less than or equal to the base fluid retained on cuttings limitation or standard (*see* §§ 435.13 and 435.15), retort monitoring of cuttings may cease for that particular well. The same BMPs and drilling fluid used during the first 0.66 X feet shall be used for all remaining NAF sections for that particular well.

6.5.2.2 When the arithmetic average ($\%BF_{well}$) of the retort analyses taken during the first 0.66 X feet (i.e., retort analyses taken from first and second 0.33 X feet) drilled with NAF is greater than the base fluid retained on cuttings limitation or standard (*see* §§ 435.13 and 435.15), retort monitoring shall continue for all remaining NAF sections for that particular well. The retort analyses for all NAF sections shall be documented in the well retort log.

6.5.3 When the arithmetic average ($\%BF_{well}$) of the retort analyses taken over all NAF sections for the entire well is greater that the base fluid retained on cuttings limitation or standard (*see* §§ 435.13 and 435.15), the operator is in violation of the base fluid retained on cuttings limitation or standard and shall submit notification of these monitoring values in accordance with NPDES permit requirements. Additionally, the operator shall, as part of the BMP Plan, initiate a reevaluation and modification to the BMP Plan in conjunction with equipment vendors and/or industry specialists.

6.5.4 The operator shall include retort monitoring data and dates of retort-monitored and non-retort-monitored NAF-cuttings discharges managed by BMPs in their NPDES permit reports.

6.6 Establishing mud pit and equipment cleaning methods in such a way as to minimize the potential for building-up drill cuttings (including accumulated solids) in the active mud system and solids control equipment system. These cleaning methods shall include but are not limited to the following procedures.

6.6.1 Ensuring proper operation and efficiency of mud pit agitation equipment.

6.6.2 Using mud gun lines during mixing operations to provide agitation in dead spaces.

6.6.3 Pumping drilling fluids off of drill cuttings (including accumulated solids) for use, recycle, or disposal before using wash water to dislodge solids.

Appendix 8 to Subpart A of Part 435—Reference C_{16}–C_{18} Internal Olefin Drilling Fluid Formulation

The reference C_{16}–C_{18} internal olefin drilling fluid used to determine the drilling fluid sediment toxicity ratio and compliance with the BAT sediment toxicity discharge limitation (*see* § 435.13) and NSPS (*see* § 435.15) shall be formulated to meet the specifications in Table 1 of this appendix.

Drilling fluid sediment toxicity ratio = 4-day LC_{50} of C_{16}–C_{18} internal olefin drilling fluid/4-day LC_{50} of drilling fluid removed from cuttings at the solids control equipment as determined by ASTM E1367–92 [incorporated by reference and specified at § 435.11(ee)] and supplemented with the sediment preparation procedure (Appendix 3 of subpart A of this part).

TABLE 1.—PROPERTIES FOR REFERENCE C_{16}–C_{18} IOS SBF USED IN DISCHARGE SEDIMENT TOXICITY TESTING

Mud weight of SBF discharged with cuttings (pounds per gallon)	Reference C_{16}–C_{18} IOs SBF (pounds per gallon)	Reference C_{16}–C_{18} IOs SBF synthetic to water ratio (%)
8.5–11	9.0	75/25
11–14	11.5	80/20
>14	14.5	85/15
Plastic Viscosity (PV), centipoise (cP)	12–30	
Yield Point (YP), pounds/100 sq. ft	10–20	
10-second gel, pounds/100 sq. ft	8–15	
10-minute gel, pounds/100 sq. ft	12–30	
Electrical stability, V	>300	

Subpart D—Coastal Subcategory

8. Section 435.41 is amended by revising paragraphs (b) through (ff) and by adding paragraphs (gg) through (ii) to read as follows:

§ 435.41 Special definitions.

* * * * *

(b) *Average of daily values for 30 consecutive days* means the average of the daily values obtained during any 30 consecutive day period.

(c) *Base fluid* means the continuous phase or suspending medium of a drilling fluid formulation.

(d) *Base fluid retained on cuttings* as applied to BAT effluent limitations and NSPS refers to the American Petroleum Institute Recommended Practice 13B–2

supplemented with the specifications, sampling methods, and averaging method for retention values provided in Appendix 7 of subpart A of this part.

(e) *Biodegradation rate* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the ISO 11734:1995 method: ''Water quality—Evaluation of the 'ultimate' anaerobic biodegradability of organic compounds in digested sludge—Method by measurement of the biogas production (1995 edition)'' (Available from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, NY 10036) supplemented with modifications in Appendix 4 of subpart A of this part.

(f) *Cook Inlet* refers to coastal locations north of the line between Cape Douglas on the West and Port Chatham on the east.

(g) *Daily values* as applied to produced water effluent limitations and NSPS means the daily measurements used to assess compliance with the maximum for any one day.

(h) *Deck drainage* means any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this Subpart.

(i) *Development facility* means any fixed or mobile structure subject to this Subpart that is engaged in the drilling of productive wells.

(j) *Dewatering effluent* means wastewater from drilling fluids and drill cuttings dewatering activities (including but not limited to reserve pits or other tanks or vessels, and chemical or mechanical treatment occurring during the drilling solids separation/recycle/disposal process).

(k) *Diesel oil* refers to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975–91, that is typically used as the continuous phase in conventional oil-based drilling fluids. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of the **Federal Register**, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(l) *Domestic waste* means the materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this Subpart.

(m) *Drill cuttings* means the particles generated by drilling into subsurface geologic formations and carried out from the wellbore with the drilling fluid. Examples of drill cuttings include small pieces of rock varying in size and texture from fine silt to gravel. Drill cuttings are generally generated from solids control equipment and settle out and accumulate in quiescent areas in the solids control equipment or other equipment processing drilling fluid (i.e., accumulated solids).

(1) *Wet drill cuttings* means the unaltered drill cuttings and adhering drilling fluid and formation oil carried out from the wellbore with the drilling fluid.

(2) *Dry drill cuttings* means the residue remaining in the retort vessel after completing the retort procedure specified in Appendix 7 of subpart A of this part.

(n) *Drilling fluid* means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. Classes of drilling fluids are:

(1) *Water-based drilling fluid* means the continuous phase and suspending medium for solids is a water-miscible fluid, regardless of the presence of oil.

(2) *Non-aqueous drilling fluid* means the continuous phase and suspending medium for solids is a water-immiscible fluid, such as oleaginous materials (e.g., mineral oil, enhanced mineral oil, paraffinic oil, C_{16}–C_{18} internal olefins, and C_8–C_{16} fatty acid/2-ethylhexyl esters).

(i) *Oil-based* means the continuous phase of the drilling fluid consists of diesel oil, mineral oil, or some other oil, but contains no synthetic material or enhanced mineral oil.

(ii) *Enhanced mineral oil-based* means the continuous phase of the drilling fluid is enhanced mineral oil.

(iii) *Synthetic-based* means the continuous phase of the drilling fluid is a synthetic material or a combination of synthetic materials.

(o) *Enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

(p) *Exploratory facility* means any fixed or mobile structure subject to this Subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(q) *Formation oil* means the oil from a producing formation which is detected in the drilling fluid, as determined by the GC/MS compliance assurance method specified in Appendix 5 of subpart A of this part when the drilling fluid is analyzed before being shipped offshore, and as determined by the RPE method specified in Appendix 6 of subpart A of this part when the drilling fluid is analyzed at the offshore point of discharge. Detection of formation oil by the RPE method may be confirmed by the GC/MS compliance assurance method, and the results of the GC/MS compliance assurance method shall supercede those of the RPE method.

(r) *Garbage* means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of coastal oil and gas facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78. A copy of MARPOL may be inspected at EPA's Water Docket; 401 M Street SW., Washington DC 20460.

(s) *M9IM* means those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(t) *M10* means those offshore facilities continuously manned by ten (10) or more persons.

(u) *Maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings means the maximum concentration allowed as measured in any single sample of the barite for determination of cadmium and mercury content.

(v) *Maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water means the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed separately. Alternatively, for BAT and NSPS the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(w) *Minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings means the minimum 96-hour LC_{50} value allowed as measured in any single sample of the discharged waste stream.

Minimum as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes means the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(x)(1) *New source* means any facility or activity of this subcategory that meets the definition of ''new source'' under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(i) *Water area* as used in ''site'' in 40 CFR 122.29 and 122.2 means the water area and water body floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(ii) *Significant site preparation work* as used in 40 CFR 122.29 means the process of surveying, clearing or preparing an area of the water body floor for the purpose of constructing or placing a development or production facility on or over the site.

(2) ''New Source'' does not include facilities covered by an existing NPDES permit immediately prior to the effective date of these guidelines pending EPA issuance of a new source NPDES permit.

(y) *No discharge of free oil* means that waste streams may not be discharged that contain free oil as evidenced by the monitoring method specified for that particular stream, e.g., deck drainage or miscellaneous discharges cannot be discharged when they would cause a film or sheen upon or discoloration of the surface of the receiving water; drilling fluids or cuttings may not be discharged when they fail the static sheen test defined in Appendix 1 of subpart A of this part.

(z) Parameters that are regulated in this subpart and listed with approved methods of analysis in Table 1B at 40 CFR 136.3 are defined as follows:

(1) *Cadmium* means total cadmium.

(2) *Chlorine* means total residual chlorine.

(3) *Mercury* means total mercury.

(4) *Oil and Grease* means total recoverable oil and grease.

(aa) *Produced sand* means the slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(bb) *Produced water* means the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(cc) *Production facility* means any fixed or mobile structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations. It includes facilities that are engaged in hydrocarbon fluids separation even if located separately from wellheads.

(dd) *Sanitary waste* means the human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(ee) *SPP toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings refers to the bioassay test procedure presented in Appendix 2 of subpart A of this part.

(ff) *Static sheen test* means the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in Appendix 1 of subpart A of this part.

(gg) *Stock barite* means the barite that was used to formulate a drilling fluid.

(hh) *Synthetic material* as applied to synthetic-based drilling fluid means material produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAH's) but are sometimes found to contain levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Internal olefins and vegetable esters are two examples of synthetic materials suitable for use by the oil and gas extraction industry in formulating drilling fluids. Internal olefins are synthesized from the isomerization of purified straight-chain (linear) hydrocarbons such as C_{16}–C_{18} linear alpha olefins. C_{16}–C_{18} linear alpha olefins are unsaturated hydrocarbons with the carbon to carbon double bond in the terminal position. Internal olefins are typically formed from heating linear alpha olefins with a catalyst. The feed material for synthetic linear alpha olefins is typically purified ethylene. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. EPA listed these two branches of synthetic fluid base materials to provide examples, and EPA does not mean to exclude other synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

(ii) *Well completion fluids* means salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(jj) *Well treatment fluids* means any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(kk) *Workover fluids* means salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(ll) *96-hour LC_{50}* means the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

9. In § 435.42 the table is amended by removing the entries ''Drilling fluids'' and ''Drill cuttings'' and by adding new entries (after ''Deck drainage'') for ''Water based'' and ''Non-aqueous'' to read as follows:

§ 435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

BPT EFFLUENT LIMITATIONS—OIL AND GREASE

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
* * * * * * *			
Water-based:			
Drilling fluids	(1)	(1)	NA
Drill Cuttings	(1)	(1)	NA
Non-aqueous:			
Drilling fluids	No discharge	No discharge	NA
Drill Cuttings	(1)	(1)	NA
* * * * * * *			

1 No discharge of free oil.

* * * * *

10. In § 435.43 the table is amended by revising entry (B) under ''Drilling fluids, drill cuttings, and dewatering effluent'' and by revising footnote 4 and adding footnote 5 to read as follows:

§ 435.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

BAT EFFLUENT LIMITATIONS

Waste source	Pollutant parameter	BAT effluent limitation
* * * * * * *		
Drilling fluids, Drill cuttings, and Dewatering effluent: 1		
* * * * * * *		
(B) Cook Inlet:		
Water-based drilling fluids, drill cuttings, and dewatering effluent.	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP Toxicity Test 4 shall be 3% by volume.
	Free oil	No discharge.2
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
Non-aqueous drilling fluids and dewatering effluent.		No discharge.
Drill cuttings associated with non-aqueous drilling fluids.		No discharge.5
* * * * * * *		

1 BAT limitations for dewatering effluent are applicable prospectively. BAT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

2 As determined by the static sheen test (*see* Appendix 1 of Subpart A of this part).

* * * * * * *

4 As determined by the suspended particulate phase (SPP) toxicity test (*see* Appendix 2 of Subpart A of this part).

5 When Cook Inlet operators cannot comply with this no discharge requirement due to technical limitations (*see* Appendix 1 of Subpart D of this part), Cook Inlet operators shall meet the same stock limitations (C_{16}-C_{18} internal olefin) and discharge limitations for drill cuttings associated with non-aqueous drilling fluids for operators in Offshore waters (*see* § 435.13) in order to discharge drill cuttings associated with non-aqueous drilling fluids.

11. In § 435.44 the table is amended by revising the entry for ''Cook Inlet'' under the entry for ''Drilling fluids and drill cuttings and dewatering effluent'' to read as follows:

§ 435.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

BCT EFFLUENT LIMITATIONS

Waste source	Pollutant parameter	BCT effluent limitation
* * * * * * *		
Drilling fluids, Drill cuttings, and Dewatering effluent: [1]		
* * * * * * *		
Cook Inlet:		
Water-based drilling fluids, drill cuttings, and dewatering effluent.	Free Oil	No discharge.[2]
Non-aqueous drilling fluids and dewatering effluent		No discharge.
Drill cuttings associated with non-aqueous drilling fluids	Free Oil	No discharge.[2]

[1] BCT limitations for dewatering effluent are applicable prospectively. BCT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.
[2] As determined by the static sheen test (*see* Appendix 1 of Subpart A of this part).

* * * * *

12. In § 435.45 the table is amended by revising entry (B) under ''Drilling fluids, drill cuttings, and dewatering effluent'' and by revising footnote 4 and adding footnote 5 to read as follows:

§ 435.45 Standards of performance for new sources (NSPS).

* * * * *

NEW SOURCE PERFORMANCE STANDARDS (NSPS)

Waste Source	Pollutant parameter	NSPS
* * * * * * *		
Drilling fluids, Drill cuttings, and Dewatering effluent: [1]		
* * * * * * *		
(B) Cook Inlet:		
Water-based drilling fluids, drill cuttings, and dewatering effluent.	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP Toxicity Test[4] shall be 3% by volume.
	Free oil	No discharge.[2]
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
Non-aqueous drilling fluids and dewatering effluent.		No discharge.
Drill cuttings associated with non-aqueous drilling fluids.		No discharge.[5]
* * * * * * *		

[1] NSPS for dewatering effluent are applicable prospectively. NSPS in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.
[2] As determined by the static sheen test (*see* Appendix 1 of subpart A of this part).
* * * * * * *
[4] As determined by the suspended particulate phase (SPP) toxicity test (*see* Appendix 2 of subpart A of this part).
[5] When Cook Inlet operators cannot comply with this no discharge requirement due to technical limitations (*see* Appendix 1 of subpart D of this part), Cook Inlet operators shall meet the same stock limitations (C_{16}–C_{18} internal olefin) and discharge limitations for drill cuttings associated with non-aqueous drilling fluids for operators in Offshore waters (*see* § 435.15) in order to discharge drill cuttings associated with non-aqueous drilling fluids.

13. Subpart D is amended by adding Appendix 1 as follows:

Appendix 1 to Subpart D of Part 435—Procedure for Determining When Coastal Cook Inlet Operators Qualify for an Exemption from the Zero Discharge Requirement for EMO-Cuttings and SBF-Cuttings in Coastal Cook Inlet, Alaska

1.0 Scope and Application

This appendix is to be used to determine whether a Cook Inlet, Alaska, operator in Coastal waters (Coastal Cook Inlet operator) qualifies for the exemption to the zero discharge requirement established by 40 CFR 435.43 and 435.45 for drill cuttings associated with the following non-aqueous drilling fluids: enhanced mineral oil based drilling fluids (EMO-cuttings) and synthetic-based drilling fluids (SBF-cuttings). Coastal Cook Inlet operators are prohibited from discharging oil-based drilling fluids. This appendix is intended to define those situations under which technical limitations

preclude Coastal Cook Inlet operators from complying with the zero discharge requirement for EMO-cuttings and SBF-cuttings. Coastal Cook Inlet operators that qualify for this exemption may be authorized to discharge EMO-cuttings and SBF-cuttings subject to the limitations applicable to operators in Offshore waters (*see* subpart A of this part).

2.0 Method

2.1 Any Coastal Cook Inlet operator must achieve the zero discharge limit for EMO-cuttings and SBF-cuttings unless it successfully demonstrates that technical limitations prevent it from being able to dispose of its EMO-cuttings or SBF-cuttings through on-site annular disposal, injection into a Class II underground injection control (UIC) well, or onshore land application.

2.2 To successfully demonstrate that technical limitations prevent it from being able to dispose of its EMO-cuttings or SBF-cuttings through on-site annular disposal, a Coastal Cook Inlet operator must show that it has been unable to establish formation injection in nearby wells that were initially considered for annular or dedicated disposal of EMO-cuttings or SBF-cuttings or prove to the satisfaction of the Alaska Oil and Gas Conservation Commission (AOGCC) that the EMO-cuttings or SBF-cuttings will be confined to the formation disposal interval. This demonstration must include:

a. Documentation, including engineering analysis, that shows (1) an inability to establish formation injection (e.g., formation is too tight), (2) an inability to confine EMO-cuttings or SBF-cuttings in disposal formation (e.g., no confining zone or adequate barrier to confine wastes in formation), or (3) the occurrence of high risk emergency (e.g., mechanical failure of well, loss of ability to inject that risks loss of well which would cause significant economic harm or create a substantial risk to safety); and

b. A risk analysis of alternative disposal options, including environmental assessment, human health and safety, and economic impact, that shows discharge as the lowest risk option.

2.3 To successfully demonstrate that technical limitations prevent it from being able to dispose of its EMO-cuttings or SBF-cuttings through injection into a Class II UIC well, a Coastal Cook Inlet operator must show that it has been unable to establish injection into a Class II UIC well or prove to the satisfaction of the Alaska Oil and Gas Conservation Commission (AOGCC) that the EMO-cuttings or SBF-cuttings will be confined to the formation disposal interval. This demonstration must include:

a. Documentation, including engineering analysis, that shows the inability to confine EMO-cuttings or SBF-cuttings in a Class II UIC well (e.g., no confining zone or adequate barrier to confine wastes in formation);

b. Documentation demonstrating that no Class II UIC well is accessible (e.g., operator does not own, competitor will not allow injection); and

c. A risk analysis of alternative disposal option, including environmental assessment, human health and safety, and economic impact, that shows discharge as the lowest risk option.

2.4 To successfully demonstrate that technical limitations prevent it from being able to dispose of its EMO-cuttings or SBF-cuttings through land application, a Coastal Cook Inlet operator must show that it has been unable to handle drilling waste or dispose of EMO-cuttings or SBF-cuttings at an appropriate land disposal site. This demonstration must include:

a. Documentation of site restrictions that preclude land application (e.g., no land disposal sites available);

b. Documentation of the platform's lack of capacity for adequate storage of EMO-cuttings or SBF-cuttings (e.g., limited storage or room for cuttings transfer); or

c. Documentation of inability to transfer EMO-cuttings or SBF-cuttings from platform to land for disposal (e.g., extremely low tides, high wave action).

3.0 Procedure

3.1 Except as described in Section 3.2 of this appendix, a Coastal Cook Inlet operator believing that it qualifies for the exemption to the zero discharge requirement for EMO-cuttings or SBF-cuttings must apply for and obtain an individual NPDES permit prior to discharging EMO-cuttings or SBF-cuttings to waters of the United States.

3.2 Discharges occurring as the result a high risk emergency (e.g., mechanical failure of well, loss of ability to inject that risks loss of well which would cause significant economic harm or safety) may be authorized by a general NPDES permit provided that:

a. The Coastal Cook Inlet operator satisfactorily demonstrates to EPA Region 10 the fulfillment of the other exemption requirements described in Section 2.0 of this appendix, or

b. The general permit allows for high risk emergency discharges and provides Reporting Requirements to EPA Region 10 immediately upon commencing discharge.

[FR Doc. 01–361 Filed 1–19–01; 8:45 am]

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Federal Register

Monday,

January 22, 2001

Part V

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6923–8]

RIN 2060–AH81

National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On April 22, 1994 and June 6, 1994, the EPA issued the ''National Emission Standards for Hazardous Air Pollutants for Source Categories: Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks.'' This rule is commonly known as the Hazardous Organic National Emission Standards for Hazardous Air Pollutants (NESHAP) or the HON. On January 20, 2000, the EPA proposed amendments to the definition of the term ''process vent'' and to add procedures for identifying ''process vents'' in order to ensure consistent interpretation of the term. The EPA also proposed revisions to several provisions of the rule to reflect the terminology used in the revised definition of process vent. These changes were proposed to reduce the burden associated with developing operating permits for facilities subject to the rule. The January 20, 2000 document also proposed to add provisions to allow off-site control of process vent emissions and to add provisions for establishing a new compliance date under certain circumstances. In that action, EPA also proposed to add an alternative procedure for use in determining compliance with wastewater treatment requirements. Today's action takes final action on those proposed amendments.

These amendments to the rule will not change the basic control requirements of the rule or the level of health protection it provides. The rule requires new and existing major sources to control emissions of hazardous air pollutants to the level reflecting application of the maximum achievable control technology.

EFFECTIVE DATE: January 22, 2001.

ADDRESSES: Docket No. A–90–19 contains the supporting information for the original NESHAP and this action. You may inspect this docket and copy materials between 8:00 a.m. and 5:30 p.m., Monday through Friday. The EPA's Air and Radiation Docket and Information Center is located at Waterside Mall, Room M–1500, first floor, 401 M Street, SW, Washington, DC 20460. The telephone number for the Air Docket and Information Center is (202) 260–7548 or (202) 260–7549. You may have to pay a reasonable fee for copying materials.

FOR FURTHER INFORMATION CONTACT: For general questions, contact Dr. Janet Meyer, Coatings and Consumer Products Group, at (919) 541–5254 (meyer.jan@epa.gov). For technical questions on appendix C and wastewater provisions, contact Elaine Manning, Waste and Chemical Processes Group, telephone number (919) 541–5499 (manning.elaine@epa.gov). The mailing address for the contacts is Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: *Docket.* The docket is an organized file of the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See the Clean Air Act (CAA), section 307(d)(7)(A).)

Judicial Review. Under Section 307(b)(1) of the CAA, judicial review of this final action is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 23, 2001. Under Section 307(b)(2) of the CAA, the requirements established by these final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this rule amendment will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at http://www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. The regulated category and entities affected by this action include:

Category	Examples of regulated entities
Industry	Synthetic organic chemical manufacturing industry (SOCMI) units, e.g., producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F.

This table is not intended to be exhaustive but, rather, provides a guide for readers regarding entities likely to be interested in the revisions to the regulation affected by this action. This action is expected to be of interest to owners and operators subject to this rule who have process vents that may be affected by these rule amendments and to those owners or operators who are sending vent streams (gas streams) to another facility for disposal. This action may also be of interest to owners and operators subject to this rule, or another rule in part 63, who plan to use biological treatment to comply with control requirements for wastewater streams. Entities potentially regulated by the HON are those which produce as primary intended products any of the chemicals listed in table 1 of 40 CFR part 63, subpart F, and are located at facilities that are major sources as defined in section 112 of the CAA. Potentially regulated entities generally are companies that manufacture industrial organic chemicals and cyclic organic crude and intermediates. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR 63.100. If you have questions regarding the applicability of this action to a particular entity, consult Dr. Janet Meyer (see FOR FURTHER INFORMATION CONTACT).

Outline. The information presented in the preamble is organized as follows:

I. Background on the Rule
II. Public Comment on the January 20, 2000 Proposal
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I. Background on the Rule

On April 22, 1994 (59 FR 19402), and June 6, 1994 (59 FR 29196), EPA published in the **Federal Register** the NESHAP for the synthetic organic chemical manufacturing industry (SOCMI) and for several other processes subject to the equipment leaks portion of the rule. This rule was promulgated as subparts F, G, H, and I in 40 CFR part 63 and are commonly referred to as the hazardous organic NESHAP, or the HON. We have published several amendments to clarify various aspects of the rule since their promulgation. See the following **Federal Register** documents for more information: September 20, 1994 (59 FR 48175); October 24, 1994 (59 FR 53359); October 28, 1994 (59 FR 54131); January 27, 1995 (60 FR 5321); April 10, 1995 (60 FR 18020); April 10, 1995 (60 FR 18026); December 12, 1995 (60 FR 63624); February 29, 1996 (61 FR 7716); June 20, 1996 (61 FR 31435); August 26, 1996 (61 FR 43698); December 5, 1996 (61 FR 64571); January 17, 1997 (62 FR 2721); August 22, 1997 (62 FR 44608); and December 9, 1998 (63 FR 67787).

In June 1994, the Chemical Manufacturers Association (CMA) and Dow Chemical Company (Dow) filed petitions for review of the promulgated rule in the U.S. Court of Appeals for the District of Columbia Circuit, *Chemical Manufacturers Association* v. *EPA,* 94–1463 and 94–1464 (D.C. Cir.) and *Dow Chemical Company* v. *EPA,* 94–1465 (D.C. Cir.). The petitioners raised over 75 technical issues on the rule's structure and applicability. The petitioners raised issues regarding details of the technical requirements, drafting clarity, and structural errors in the drafting of certain sections of the rule. On August 26, 1996, we proposed clarifying and correcting amendments to subparts F, G, H, and I of part 63 to address the issues raised by CMA and Dow on the April 1994 rule. On December 5, 1996 and January 17, 1997, we took final action on the amendments proposed on August 26, 1996. On August 22, 1997, we proposed corrections to the definition of ''enhanced biological treatment systems or enhanced biological treatment process'' and conforming edits to appendix C of part 63 to reflect these changes to the definition. On December 9, 1998, we took final action on the amendments proposed on August 22, 1997. On January 20, 2000, we proposed revisions to the definition of process vent as well as miscellaneous corrections and clarifying amendments.

II. Public Comment on the January 20, 2000 Proposal

Five comment letters were received on the January 20, 2000 **Federal Register** proposed amendments to the rule. Comment letters were received from consultants, industry representatives, and one trade association. In general, the comment letters were supportive of the proposed changes, however some of the comment letters included suggested editorial revisions to address drafting clarity concerns or correct errors in cross referencing other sections in the rule. We considered these suggestions and, where appropriate, made changes to the proposed amendments. The significant issues raised and the changes to the proposed amendments are summarized in this preamble. A memorandum containing EPA's response to all comments can be found in Docket A–90–19. The responses to comments may also be obtained from the Internet through the Technology Transfer Network (TTN) at http://www.epa.gov/ttn/oarpg.

III. Summary of Major Comments and Changes to the Proposed Amendments to the Rule

A. Definition of Process Vent and Associated Changes Process Vent Definition

One commenter expressed support for the proposed changes to the definition of process vent, but also expressed a concern that the proposed amendments do not adequately address a unique situation that exists at the commenter's facility. Specifically, one of the commenter's HON-covered facilities has a gas stream that passes through a recovery device and has been characterized as a Group 2 process vent (i.e., a vent stream that is not subject to control requirements). This gas stream is part of an approved emissions average, and the commenter has installed a control device to create credits by controlling this gas stream to offset debits created elsewhere in the chemical manufacturing process unit. The commenter also has another gas stream that is a Group 1 process vent (i.e., subject to control requirements) that is combined with the Group 2 process vent after the last recovery device for the Group 2 process vent stream and prior to the entry into the control device. The commenter is concerned that the proposed definition for ''process vent'' could be read to deem the two physically separate gas streams as a single ''process vent.'' This occurs because the determination of the location of the ''process vent'' for the Group 2 gas stream would presumably be ''the point of entry into [the] control device.'' The commenter thought that this would be inconsistent with §§ 63.115(a) and 63.150(g)(2), and with EPA's general intent that the characteristics of these gas streams be determined after the last recovery device and prior to the entrance to a control device. The commenter submitted recommended revisions to the proposed definition for process vents and to § 63.107(a) to address their situation.

The EPA thoroughly considered the points raised by the commenter and concluded that the commenter's suggested language for the definition of process vent and for § 63.107(a) would not be compatible with the intent of the January 20, 2000 proposed amendments. The commenter's suggested changes to the proposed amendments would alter the intended effect by requiring the identification of gas streams upstream of the discharge point and requiring identification of the last recovery device and of any streams combined after the recovery device. That identification would significantly increase the information that must be submitted as part of the operating permit application.

As part of the consideration of this comment, we reexamined the interaction between the proposed changes to the definition of process vent and the emissions averaging provisions in the rule. We agree with the commenter that there can be situations where the proposed definition of process vent is incompatible with § 63.150(g)(2)(i). Specifically, the language in § 63.150(g)(2)(i) reflects an assumption that there are no combinations of gas streams after the final recovery device and before any control device. Further, it was also

assumed that the gas stream is associated with a specific unit operation or process unit (§ 63.150(g)(2)(ii)(B)). For these reasons, we concluded that for the purposes of emissions averaging, it would be appropriate to retain the designation of a process vent and its characteristics as specified in § 63.150(g)(2)(i). Specifically, it was decided that § 63.150(g)(2)(i) should indicate that the process vent stream characteristics shall be determined before the gas stream is combined with other gas streams following the last recovery device. It was also decided that it was necessary to make other edits to § 63.150 to ensure that there is no confusion with the definition of process vent and the directions in § 63.115 for determining the total resource effectiveness (TRE) of the vent stream. Thus, conforming edits were also made to § 63.150(a) and § 63.150(m)(1)(i) and (2)(i) to ensure that the location of the process vent as used in emissions averaging was determined as specified in § 63.150(g)(2)(i). We are also correcting an error in the drafting of § 63.150(g)(2)(iii)(B)(*2*) to replace references to ''product recovery devices'' with references to ''recovery devices.'' This change was made to make § 63.150(g)(2)(iii)(B)(*2*) consistent with § 63.115(a) and other provisions for determining the characteristics of a vent stream.

Section 63.107(h)(9). One commenter requested that EPA clarify the meaning of the term ''process analyzer.'' The commenter interprets this provision as covering all gas streams exiting a process analyzer, whether the gas stream represents a sample from within the process (i.e., prior to any recovery and control devices) or a sample after the gas stream has exited a recovery device but prior to entry into a control device (if any).

In the proposed language in § 63.107(h)(9), we used the term of art ''process analyzer'' to refer to instruments that are used in the field as opposed to instruments that are used in a laboratory setting. The use of this term of art was not intended to make a distinction between analyzers used to monitor the composition of a gas stream prior to the last recovery device or following the last recovery device. We did not intend to limit this exemption to analyzers used within the process and to exclude analyzers used on gas streams after discharge from the process. Consequently, in the final amendments we have revised the wording of the proposed § 63.107(h)(9) to refer to ''a gas stream exiting an analyzer.''

Section 63.110(a). One commenter disagreed with the proposed revision to § 63.110(a). The commenter thought that the proposed change to use the conjunction ''and/or'' was not as clear as the current version of the rule which uses only the conjunction ''and.'' According to the commenter, the latter is not only correct, it's clearer. The commenter recommended that ''and/or'' be replaced with ''and.''

The purpose of this amendment to § 63.110(a) is to add in-process equipment subject to § 63.149 to the list of emission points subject to the provisions in 40 CFR part 63, subpart G. The EPA agrees with the commenter and has revised this text as suggested by the commenter.

B. Appendix C to Part 63

In the January 20, 2000 **Federal Register**, we proposed to amend appendix C to 40 CFR part 63 to add a concentration measurement procedure for determining the fraction biodegraded (f_{bio}) in biological treatment units that are not thoroughly mixed, and thus, have multiple zones of mixing. In the proposed amendments, we specified that you would identify zones with substantially uniform characteristics and would measure representative organic compound concentrations in each zone as well as the inlet and outlet of the biological treatment unit. We received one comment requesting that we clarify that it is acceptable in some circumstances to interpolate compound concentrations for one or more zones when using this new procedure. The commenter noted that if a basin is considered as several zones and one of the interior zones is not readily accessible for sampling, the concentration could be estimated by interpolation of the concentration data for the remaining zones. The commenter noted that this approach is consistent with the instructions provided in the ''Technical Support Document for the Evaluation of Aerobic Biological Treatment Units with Multiple Mixing Zones.''

We agree that under some circumstances it can be acceptable to allow interpolation of compound concentrations in some zones. Specifically, in units with well-characterized concentration measurements obtained in an initial evaluation of the unit, it may be possible to demonstrate that there is a good correlation of the component concentrations with the locations in the multiple-zone unit. With a good correlation, it may be possible to accurately predict the concentrations in selected zones without actually testing each selected zone. This correlation method may be used for units that have many zones (greater than five) or where one of the interior zones is not readily accessible for sampling. In the final amendments to section III.E for appendix C to 40 CFR part 63, we have added a paragraph to explain those situations where it is acceptable to determine the concentration in the zone by interpolation.

C. Miscellaneous Corrections and Clarifications to the Rule

Two commenters suggested changes to the proposed amendments to correct citations, minor drafting errors, and some minor clarifications of the text. We considered these suggestions and, where appropriate, have made changes to the rule. The sections and the associated changes are:

- Section 63.113(e)—We are revising the sentence to refer to TRE index value in all cases. The proposed language referred to ''TRE index'' instead of ''TRE index value'' in the reference to § 63.115.
- Section 63.113(i)(2)—We are correcting the cross reference to § 63.103(c) from § 63.10(b) in the last sentence of this paragraph.
- Section 63.115(f)(1)—We are clarifying that the owner or operator may determine the characteristics of a HON stream, or combination of HON streams, at a representative point as near as practical to, but before, the point at which it is combined with one or more non-HON streams. The change from the proposed amendments is to clarify that the combination may be for one or more non-HON streams.
- Section 63.115(f)(2)—We are correcting a punctuation error in the proposed language.
- Section 63.138(i)(2)(iii)—We are correcting a grammatical error in the last sentence of this paragraph.
- Section 63.147(b)(8) introductory text—We are removing the phrase ''in the Notice of Compliance Status Report'' which was inadvertently included in the proposed amendment to this paragraph.
- Table 12 to subpart G, item 3—We are revising this item to clarify that it applies to treatment processes other than those listed in items 1 and 2 of table 12 in addition to alternative monitoring parameters listed in item 2.
- Table 20 to subpart G—We are clarifying that the control devices subject to § 63.139 are being used to comply with the requirements in §§ 63.133–63.138. This is a more precise statement of the applicability of table 20 to subpart G than the proposed language.

IV. Technical Corrections

The following amendments are minor technical corrections that were not part of the January 20, 2000 **Federal Register** proposed amendments. These changes are being made as part of today's action as a matter of efficiency in rulemaking. Furthermore, these changes are noncontroversial and do not substantively change the requirements of the rule. By promulgating these technical corrections directly as a final rule, EPA is foregoing an opportunity for public comment on a notice of proposed rulemaking. Section 553(b) of title 5 U.S.C. and section 307(b) of the CAA permit an agency to forego notice and comment when ''the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The EPA finds that notice and comment regarding these minor technical corrections are unnecessary due to their noncontroversial nature, and because they do not substantively change the requirements of the HON. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of a notice of proposed rulemaking is unnecessary.

The corrections are:

- Section 63.118(f)(5)—We are correcting the reference to § 63.118(a)(2)(v) to read § 63.118(a)(2). The need to correct this reference was overlooked when we redrafted § 63.118(a) in the January 17, 1997 **Federal Register** amendments.
- Section 63.128(h)(1)(ii)—The citation should say ''minimum residence time'' instead of ''maximum residence time'' to be consistent with related combustion device provisions in §§ 63.120(d)(1)(i)(B), 63.139(c)(1)(iii), and 63.172(c) which all use ''minimum'' residence time. We are correcting this text to be consistent with the other combustion device provisions in subpart G of 40 CFR part 63.
- Section 63.130(d)(5)—We are correcting the reference to § 63.130(a)(2)(v) to read § 63.130(a)(2)(i). The need to correct this reference was overlooked when we redrafted § 63.130 in the January 17, 1997 **Federal Register** amendments.
- Section 63.140(c)—We are correcting the reference to § 63.147(c)(7) to § 63.147(b)(7).
- Section 63.146(b)(9) introductory text and paragraph (b)(9)(iii)—Removing references to § 63.138(d) and (h)(3) in § 63.146(b)(9) introductory text because these treatment options do not require a design evaluation or performance test to demonstrate compliance with the removal requirements. We are deleting § 63.146(b)(9)(iii), and the reference to it in § 63.146(b)(9) introductory text, since it is no longer needed with the above correction to § 63.146(b)(9) introductory text.
- Section 63.146(d)—In order for § 63.146(d) to be consistent with the April 26, 1999 **Federal Register** corrections, we are correcting § 63.146(d) introductory text to add references to paragraph (d), (f), or (g) of § 63.138 and to add references to the monitoring requirements specified in § 63.143(c) and (d).
- Table 12 to subpart G—We are adding the option of monitoring column operating temperature as an alternative to monitoring wastewater feed temperature. Either parameter provides information necessary to evaluate column operating conditions. This change is consistent with parameters specified in § 63.138(d). Without this change, owners or operators using steam strippers who wish to monitor column operating temperature would have to request approval of the alternative monitoring parameters. This was not our intent.
- Table 17 to subpart G, note (f)—As published on January 17, 1997, this footnote should read: ''Parameter(s) to be monitored or measured in accordance with Table 12 and § 63.143 of this subpart. '' Presently, the note (f) reads ''Parameter(s) to be monitored or measured in accordance with Table 12 in § 63.143 of this subpart.''

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is ''significant'' and, therefore, subject to review by the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, or

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

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' within the meaning of the Executive Order because none of the listed criteria apply to this action. These changes to the HON are primarily technical and administrative and do not raise novel legal or policy issues. These changes are not expected to impose significant new costs. This action will not have an annual effect on the economy of $100 million or other adverse economic impacts, will not create any inconsistencies with other actions by other agencies, will not alter any budgetary impacts, or raise any novel legal or policy issues. Therefore, this action is considered ''not significant'' and OMB review is not required.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the

rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns, and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

These amendments to the final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's amendments would not impose any enforceable duties on these entities. This action amends the definition of ''process vent'' and makes other technical and administrative changes to the rule. Thus, the requirements of section 6 of the Executive Order do not apply to these amendments to the final rule.

C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments

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 OMB, 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 amendments to the rule would not significantly or uniquely affect the communities of Indian tribal governments. The action amends the definition of ''process vent'' and makes other technical and administrative changes to the rule. No tribal governments own or operate chemical manufacturing process units that are subject to this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final amendment to the rule.

D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments in the aggregate, or to the private sector in any 1 year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that today's action contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's action is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis and coordinate with small entity stakeholders if the Agency determines that a rule will have a significant economic impact on a substantial number of small entities.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these amendments to the rule. The EPA has also determined that these amendments 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 government jurisdictions. Today's amendments are primarily technical and administrative and are not expected to impose significant new costs. The EPA does not anticipate that the changes to the rule will create any significant additional burden for any of the regulated entities.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and has assigned OMB control number 2060–0282. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1414.03) and a copy may be obtained from Sandy Farmer by mail at the Collection Strategies Division (2822), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740.

Today's amendments to the rule should have a very minor effect on the information collection burden estimates made previously. Based on discussions with industry representatives, EPA believes that this action would result an insignificant increase in the estimated information collection burden. Any increase would be the burden associated with identification of and submittal of compliance documentation for previously unreported process vents subject to this rule. The EPA considers these changes to the rule to represent a clarification of the definition of process vent and the reporting requirements for process vents. Thus, EPA considers that if there is any increase in the burden associated with the rule, this increase would be small and well within the uncertainty of the analysis. Consequently, the ICR has not been revised for these amendments to the rule.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs all Federal agencies to use voluntary consensus standards (VCS) in its regulatory activities instead of government-unique standards unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.,* material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by VCS bodies. The NTTAA requires Federal agencies like the EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable VCS.

This action includes amendments to appendix C to add another procedure for determining fraction biodegraded. Therefore, we conducted a search to identify potentially applicable VCS for this case. However, we identified no such standards, and none were brought to our attention in comments. Therefore, EPA has decided to add the proposed additional procedure to appendix C of 40 CFR part 63.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, 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. The EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 22, 2001.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 22, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart F—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

2. Section 63.100 is amended by revising paragraph (e) introductory text, by revising paragraph (j)(4), and by adding paragraph (q) to read as follows:

§ 63.100 Applicability and designation of source.

* * * * *

(e) The source to which this subpart applies is the collection of all chemical manufacturing process units and the associated equipment at a major source that meet the criteria specified in paragraphs (b)(1) through (3) of this section. The source includes the process vents; storage vessels; transfer racks; waste management units; maintenance wastewater; heat exchange systems; equipment identified in § 63.149; and pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers that are associated with that collection of chemical manufacturing process units. The source also includes equipment required by, or utilized as a method of compliance with, subparts F, G, or H of this part which may include control devices and recovery devices.

* * * * *

(j) * * *

(4) Batch process vents within a chemical manufacturing process unit.

* * * * *

(q) If the owner or operator of a process vent, or of a gas stream transferred subject to § 63.113(i), is unable to comply with the provisions of §§ 63.113 through 63.118 by the applicable compliance date specified in paragraph (k),(l), or (m) of this section

for the reasons stated in paragraph (q)(1),(3), or (5) of this section, the owner or operator shall comply with the applicable provisions in §§ 63.113 through 63.118 as expeditiously as practicable, but in no event later than the date approved by the Administrator pursuant to paragraph (q)(2), (4), or (6) of this section, respectively. For requests under paragraph (q)(1) or (3) of this section, the date approved by the Administrator may be earlier than, and shall not be later than, the later of January 22, 2004 or 3 years after the transferee's refusal to accept the stream for disposal. For requests submitted under paragraph (q)(5) of this section, the date approved by the Administrator may be earlier than, and shall not be later than, 3 years after the date of publication of the amendments to this subpart or to subpart G of this part which created the need for an extension of the compliance.

(1) If the owner or operator has been sending a gas stream for disposal as described in § 63.113(i) prior to January 22, 2001, and the transferee does not submit a written certification as described in § 63.113(i)(2) and ceases to accept the gas stream for disposal, the owner or operator shall comply with paragraph (q)(2) of this section.

(2)(i) An owner or operator directed to comply with paragraph (q)(2) of this section shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(ii) The compliance schedule and justification shall be submitted no later than 90 days after the transferee ceases to accept the gas stream for disposal.

(iii) The Administrator shall approve the compliance schedule or request changes within 120 days of receipt of the compliance schedule and justification.

(3) If the owner or operator has been sending the gas stream for disposal as described in § 63.113(i) to a transferee who had submitted a written certification as described in § 63.113(i)(2), and the transferee revokes its written certification, the owner or operator shall comply with paragraph (q)(4) of this section. During the period between the date when the owner or operator receives notice of revocation of the transferee's written certification and the compliance date established under paragraph (q)(4) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph (q)(3), the term ''excess emissions'' means emissions in excess of those that would have occurred if the transferee had continued managing the gas stream in compliance with the requirements in §§ 63.113 through 63.118. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan. If the measures that can be reasonably taken will change over time, so that a more effective measure which could not reasonably be taken initially would be reasonable at a later date, the Administrator may require the more effective measure by a specified date (in addition to or instead of any other measures taken sooner or later than that date) as a condition of approval of the compliance schedule.

(4)(i) An owner or operator directed to comply with this paragraph (q)(4) shall submit to the Administrator for approval the documents specified in paragraphs (q)(4)(i)(A) through (E) of this section no later than 90 days after the owner or operator receives notice of revocation of the transferee's written certification.

(A) A request for determination of a compliance date.

(B) A justification for the request for determination of a compliance date.

(C) A compliance schedule.

(D) A justification for the compliance schedule.

(E) A description of the measures that will be taken to minimize excess emissions until the new compliance date, and the date when each measure will first be implemented. The owner or operator shall describe how, and to what extent, each measure will minimize excess emissions, and shall justify any period of time when measures are not in place.

(ii) The Administrator shall approve or disapprove the request for determination of a compliance date and the compliance schedule, or request changes, within 120 days after receipt of the documents specified in paragraphs (q)(4)(i)(A) through (E) of this section. Upon approving the request for determination and compliance schedule, the Administrator shall specify a reasonable compliance date consistent with the introductory text in paragraph (q) of this section.

(5) If the owner's or operator's inability to meet otherwise applicable compliance deadlines is due to amendments of this subpart or of subpart G of this part published on or after January 22, 2001 and neither condition specified in paragraph (q)(1) or (3) of this section is applicable, the owner or operator shall comply with paragraph (q)(6) of this section.

(6)(i) An owner or operator directed to comply with this paragraph (6)(i) shall submit to the Administrator for approval, a request for determination of a compliance date, a compliance schedule, a justification for the determination of a compliance date, and a justification for the compliance schedule.

(ii) The documents required to be submitted under paragraph (q)(6)(i) of this section shall be submitted no later than 120 days after publication of the amendments of this subpart or of subpart G of this part which necessitate the request for an extension.

(iii) The Administrator shall approve or disapprove the request for a determination of a compliance date, or request changes, within 120 days after receipt of the request for determination of a compliance date, the compliance schedule, and the two justifications. If the request for determination of a compliance date is disapproved, the compliance schedule is disapproved and the owner or operator shall comply by the applicable date specified in paragraph (k),(l), or (m) of this section. If the request for the determination of a compliance date is approved, the Administrator shall specify, at the time of approval, a reasonable compliance date consistent with the introductory text in paragraph (q) of this section.

3. Section 63.101 is amended by adding in alphabetical order the definition of ''Batch process vent'' and by revising the definition of ''Process vent'' to read as follows:

§ 63.101 Definitions.

* * * * *

Batch process vent means gaseous venting to the atmosphere from a batch operation.

* * * * *

Process vent means the point of discharge to the atmosphere (or the point of entry into a control device, if any) of a gas stream if the gas stream has the characteristics specified in § 63.107(b) through (h), or meets the criteria specified in § 63.107(i). For purposes of §§ 63.113 through 63.118, all references to the characteristics of a process vent (e.g., flow rate, total HAP concentration, or TRE index value) shall mean the characteristics of the gas stream.

* * * * *

4. Subpart F is amended by adding a new § 63.107 to read as follows:

§ 63.107 Identification of process vents subject to this subpart.

(a) The owner or operator shall use the criteria specified in this § 63.107 to determine whether there are any process vents associated with an air oxidation reactor, distillation unit, or reactor that

is in a source subject to this subpart. A process vent is the point of discharge to the atmosphere (or the point of entry into a control device, if any) of a gas stream if the gas stream has the characteristics specified in paragraphs (b) through (h) of this section, or meets the criteria specified in paragraph (i) of this section.

(b) Some, or all, of the gas stream originates as a continuous flow from an air oxidation reactor, distillation unit, or reactor during operation of the chemical manufacturing process unit.

(c) The discharge to the atmosphere (with or without passing through a control device) meets at least one of the conditions specified in paragraphs (c)(1) through (3) of this section.

(1) Is directly from an air oxidation reactor, distillation unit, or reactor; or

(2) Is from an air oxidation reactor, distillation unit, or reactor after passing solely (*i.e.,* without passing through any other unit operation for a process purpose) through one or more recovery devices within the chemical manufacturing process unit; or

(3) Is from a device recovering only mechanical energy from a gas stream that comes either directly from an air oxidation reactor, distillation unit, or reactor, or from an air oxidation reactor, distillation unit, or reactor after passing solely (*i.e.,* without passing through any other unit operation for a process purpose) through one or more recovery devices within the chemical manufacturing process unit.

(d) The gas stream contains greater than 0.005 weight percent total organic HAP at the point of discharge to the atmosphere (or at the point of entry into a control device, if any).

(e) The air oxidation reactor, distillation unit, or reactor is part of a chemical manufacturing process unit that meets the criteria of § 63.100(b).

(f) The gas stream is in the gas phase from the point of origin at the air oxidation reactor, distillation unit, or reactor to the point of discharge to the atmosphere (or to the point of entry into a control device, if any).

(g) The gas stream is discharged to the atmosphere either on-site, off-site, or both.

(h) The gas stream is not any of the items identified in paragraphs (h)(1) through (9) of this section.

(1) A relief valve discharge.

(2) A leak from equipment subject to subpart H of this part.

(3) A gas stream going to a fuel gas system as defined in § 63.101.

(4) A gas stream exiting a control device used to comply with § 63.113.

(5) A gas stream transferred to other processes (on-site or off-site) for reaction or other use in another process (*i.e.,* for chemical value as a product, isolated intermediate, byproduct, or coproduct, or for heat value).

(6) A gas stream transferred for fuel value (*i.e.,* net positive heating value), use, reuse, or for sale for fuel value, use, or reuse.

(7) A storage vessel vent or transfer operation vent subject to § 63.119 or § 63.126.

(8) A vent from a waste management unit subject to §§ 63.132 through 63.137.

(9) A gas stream exiting an analyzer.

(i) The gas stream would meet the characteristics specified in paragraphs (b) through (g) of this section, but, for purposes of avoiding applicability, has been deliberately interrupted, temporarily liquefied, routed through any item of equipment for no process purpose, or disposed of in a flare that does not meet the criteria in § 63.11(b), or an incinerator that does not reduce emissions of organic HAP by 98 percent or to a concentration of 20 parts per million by volume, whichever is less stringent.

Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

5. Section 63.110 is amended by revising paragraph (a) to read as follows:

§ 63.110 Applicability.

(a) This subpart applies to all process vents, storage vessels, transfer racks, wastewater streams, and in-process equipment subject to § 63.149 within a source subject to subpart F of this part.

* * * * *

6. Section 63.111 is amended by:

a. Adding in alphabetical order the definition of ''Point of transfer'';

b. Revising the definition of ''Group 1 process vent'';

c. Revising the definition of ''Group 2 process vent''; and

d. Revising the definition of ''Vent stream.''

The additions and revisions read as follows:

§ 63.111 Definitions.

* * * * *

Group 1 process vent means a process vent for which the vent stream flow rate is greater than or equal to 0.005 standard cubic meter per minute, the total organic HAP concentration is greater than or equal to 50 parts per million by volume, and the total resource effectiveness index value, calculated according to § 63.115, is less than or equal to 1.0.

Group 2 process vent means a process vent for which the vent stream flow rate is less than 0.005 standard cubic meter per minute, the total organic HAP concentration is less than 50 parts per million by volume or the total resource effectiveness index value, calculated according to § 63.115, is greater than 1.0.

* * * * *

Point of transfer means:

(1) If the transfer is to an off-site location for control, the point where the conveyance crosses the property line; or

(2) If the transfer is to an on-site location not owned or operated by the owner or operator of the source, the point where the conveyance enters the operation or equipment of the transferee.

* * * * *

Vent stream, as used in the process vent provisions, means the gas stream flowing through the process vent.

* * * * *

7. Section 63.113 is amended by:

a. Revising paragraph (a) introductory text and revising the second sentence in paragraph (a)(3);

b. Revising paragraph (c) introductory text and paragraph (c)(1) introductory text;

c. Revising paragraph (e);

d. Revising paragraph (g); and

e. Adding paragraph (i).

The revisions and additions read as follows:

§ 63.113 Process vent provisions—reference control technology.

(a) The owner or operator of a Group 1 process vent as defined in this subpart shall comply with the requirements of paragraph (a)(1), (2), or (3) of this section. The owner or operator who transfers a gas stream that has the characteristics specified in § 63.107 (b) through (h) or meets the criteria specified in § 63.107(i) to an off-site location or an on-site location not owned or operated by the owner or operator of the source for disposal shall comply with the requirements of paragraph (i) of this section.

* * * * *

(3) * * * If the TRE index value is greater than 1.0, the process vent shall comply with the provisions for a Group 2 process vent specified in either paragraph (d) or (e) of this section, whichever is applicable.

* * * * *

(c) Halogenated vent streams from Group 1 process vents that are combusted shall be controlled according to paragraph (c)(1) or (2) of this section.

(1) If a combustion device is used to comply with paragraph (a)(2) of this

section for a halogenated vent stream, then the gas stream exiting the combustion device shall be conveyed to a halogen reduction device, such as a scrubber, before it is discharged to the atmosphere.

* * * * *

(e) The owner or operator of a Group 2 process vent with a TRE index value greater than 4.0 shall maintain a TRE index value greater than 4.0, comply with the provisions for calculation of a TRE index value in § 63.115 and the reporting and recordkeeping provisions in §§ 63.117(b) and 63.118(c) and (h), and is not subject to monitoring or any other provisions of §§ 63.114 through 63.118.

* * * * *

(g) The owner or operator of a Group 2 process vent with a total organic HAP concentration less than 50 parts per million by volume shall maintain a total organic HAP concentration less than 50 parts per million by volume; comply with the Group determination procedures in § 63.115(a), (c), and (e); the reporting and recordkeeping requirements in §§ 63.117(d) and 63.118(e) and (j); and is not subject to monitoring or any other provisions of §§ 63.114 through 63.118.

* * * * *

(i) *Off-site control or on-site control not owned or operated by the source.* This paragraph (i) applies to gas streams that have the characteristics specified in § 63.107(b) through (h) or meet the criteria specified in § 63.107(i); that are transferred for disposal to an on-site control device (or other compliance equipment) not owned or operated by the owner or operator of the source generating the gas stream, or to an off-site control device or other compliance equipment; and that have the characteristics (e.g., flow rate, total organic HAP concentration, or TRE index value) of a Group 1 process vent, determined at the point of transfer.

(1) The owner or operator transferring the gas stream shall:

(i) Comply with the provisions specified in § 63.114(d) for each gas stream prior to transfer.

(ii) Notify the transferee that the gas stream contains organic hazardous air pollutants that are to be treated in accordance with the provisions of this subpart. The notice shall be submitted to the transferee initially and whenever there is a change in the required control.

(2) The owner or operator may not transfer the gas stream unless the transferee has submitted to the EPA a written certification that the transferee will manage and treat any gas stream transferred under this paragraph (i) and received from a source subject to the requirements of this subpart in accordance with the requirements of either §§ 63.113 through 63.118, or § 63.102(b), or subpart D of this part if alternative emission limitations have been granted the transferor in accordance with those provisions. The certifying entity may revoke the written certification by sending a written statement to EPA and the owner or operator giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the regulatory provisions listed in this paragraph (i). Upon expiration of the notice period, the owner or operator may not transfer the gas stream to the transferee. Records retained by the transferee shall be retained in accordance with § 63.103(c).

(3) By providing this written certification to EPA, the certifying entity accepts responsibility for compliance with the regulatory provisions listed in paragraph (i)(2) of this section with respect to any transfer covered by the written certification. Failure to abide by any of those provisions with respect to such transfers may result in enforcement action by EPA against the certifying entity in accordance with the enforcement provisions applicable to violations of these provisions by owners or operators of sources.

(4) Written certifications and revocation statements to EPA from the transferees of such gas streams shall be signed by a responsible official of the certifying entity, provide the name and address of the certifying entity, and be sent to the appropriate EPA Regional Office at the addresses listed in § 63.13. Such written certifications are not transferable by the transferee.

8. Section 63.114 is amended by revising paragraph (a)(3), revising paragraph (a)(4)(ii), and revising paragraph (d) to read as follows:

§ 63.114 Process vent provisions—monitoring requirements.

(a) * * *

(3) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, the following monitoring equipment is required: a temperature monitoring device in the firebox equipped with a continuous recorder. This requirement does not apply to gas streams that are introduced with primary fuel or are used as the primary fuel.

(4) * * *

(ii) A flow meter equipped with a continuous recorder shall be located at the scrubber influent for liquid flow. Gas flow rate shall be determined using one of the procedures specified in paragraphs (a)(4)(ii)(A) through (C) of this section.

(A) The owner or operator may determine gas flow rate using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to rules in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for this subpart specified in § 63.100(k), the owner or operator may determine gas flow rate by the method that had been utilized to comply with those rules. A determination that was conducted prior to the compliance date for this subpart may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas flow rate determination plan that documents an appropriate method which will be used to determine the gas flow rate. The plan shall require determination of gas flow rate by a method which will at least provide a value for either a representative or the highest gas flow rate anticipated in the scrubber during representative operating conditions other than startups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas flow rate, and a description of the records that will be maintained to document the determination of gas flow rate. The owner or operator shall maintain the plan as specified in § 63.103(c).

* * * * *

(d) The owner or operator of a process vent shall comply with paragraph (d)(1) or (2) of this section for any bypass line between the origin of the gas stream (i.e., at an air oxidation reactor, distillation unit, or reactor as identified in § 63.107(b)) and the point where the gas stream reaches the process vent, as described in § 63.107, that could divert the gas stream directly to the atmosphere. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph (d).

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 63.118(a)(3). The flow indicator shall be installed at the entrance to any bypass line that could divert the gas stream to the atmosphere; or

(2) Secure the bypass line valve in the non-diverting position with a car-seal or

a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and the gas stream is not diverted through the bypass line.

* * * * *

9. Section 63.115 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b) introductory text;

c. Revising paragraph (c) introductory text and paragraphs (c)(4)(i) and (ii);

d. Revising paragraph (d)(1) introductory text and paragraph (d)(1)(iii)(D)(*4*);

e. Revising paragraph (d)(2) introductory text, paragraphs (d)(2)(i) and (ii) introductory text, and paragraph (d)(2)(ii)(C); and

f. Adding paragraph (f).

The revisions and additions read as follows:

§ 63.115 Process vent provisions—methods and procedures for process vent group determination.

(a) For purposes of determining vent stream flow rate, total organic HAP or total organic carbon concentration or TRE index value, as specified under paragraph (b), (c), or (d) of this section, the sampling site shall be after the last recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present and prior to release to the atmosphere.

* * * * *

(b) To demonstrate that a vent stream flow rate is less than 0.005 standard cubic meter per minute in accordance with the Group 2 process vent definition of this subpart, the owner or operator shall measure flow rate by the following procedures:

* * * * *

(c) Each owner or operator seeking to demonstrate that a vent stream has an organic HAP concentration below 50 parts per million by volume in accordance with the Group 2 process vent definition of this subpart shall measure either total organic HAP or TOC concentration using the following procedures:

* * * * *

(4) * * *

(i) Method 25A of 40 CFR part 60, appendix A, shall be used only if a single organic HAP compound is greater than 50 percent of total organic HAP, by volume, in the vent stream.

(ii) The vent stream composition may be determined by either process knowledge, test data collected using an appropriate EPA method, or a method or data validated according to the protocol in Method 301 of appendix A of this part. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current vent stream conditions.

* * * * *

(d) * * *

(1) Engineering assessment may be used to determine vent stream flow rate, net heating value, TOC emission rate, and total organic HAP emission rate for the representative operating condition expected to yield the lowest TRE index value.

* * * * *

(iii) * * *

(D) * * *

(*4*) Estimation of maximum expected net heating value based on the vent stream concentration of each organic compound or, alternatively, as if all TOC in the vent stream were the compound with the highest heating value.

* * * * *

(2) Except as provided in paragraph (d)(1) of this section, vent stream flow rate, net heating value, TOC emission rate, and total organic HAP emission rate shall be measured and calculated according to the procedures in paragraphs (d)(2)(i) through (v) of this section and used as input to the TRE index value calculation in paragraph (d)(3) of this section.

(i) The vent stream volumetric flow rate (Q_s), in standard cubic meters per minute at 20 degrees Celcius, shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. If the vent stream tested passes through a final steam jet ejector and is not condensed, the vent stream volumetric flow shall be corrected to 2.3 percent moisture.

(ii) The molar composition of the vent stream, which is used to calculate net heating value, shall be determined using the following methods:

* * * * *

(C) Method 4 of 40 CFR part 60, appendix A, to measure the moisture content of the vent stream.

* * * * *

(f) Notwithstanding any other provisions of this subpart, in any case where a process vent includes one or more gas streams that are not from a source subject to this subpart (hereafter called ''non-HON streams'' for purposes of this paragraph), and one or more gas streams that meet the criteria in § 63.107(b) through (h) or the criteria in § 63.107(i) (hereafter called ''HON streams'' for purposes of this paragraph), the owner or operator may elect to comply with paragraphs (f)(1) through (3) of this section.

(1) The owner or operator may determine the characteristics (flow rate, total organic HAP concentration, and TRE index value) for each HON stream, or combination of HON streams, at a representative point as near as practical to, but before, the point at which it is combined with one or more non-HON streams.

(2) If one or more of the HON streams, or combinations of HON streams, has the characteristics (determined at the location specified in paragraph (f)(1) of this section) associated with a Group 1 process vent, the combined vent stream is a Group 1 process vent. Except as specified in paragraph (f)(3) of this section, if none of the HON streams, or combinations of HON streams, when determined at the location specified in paragraph (f)(1) of this section, has the characteristics associated with a Group 1 process vent, the combined vent stream is a Group 2 process vent regardless of the TRE index value determined at the location specified in § 63.115(a). If the combined vent stream is a Group 2 process vent as determined by the previous sentence, but one or more of the HON streams, or combinations of HON streams, has a TRE index value greater than 1 but less than or equal to 4, the combined vent stream is a process vent with a TRE index value greater than 1 but less than or equal to 4. In this case, the owner or operator shall monitor the combined vent stream as required by § 63.114(b).

(3) Paragraphs (f)(1) and (2) of this section are not intended to apply instead of any other subpart of this part. If another subpart of this part applies to one or more of the non-HON streams contributing to the combined vent stream, that subpart may impose emission control requirements such as, but not limited to, requiring the combined vent stream to be classified and controlled as a Group 1 process vent.

10. Section 63.116 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b)(2);

c. Revising paragraph (c)(1)(i)(B) and paragraph (c)(4)(iv); and

d. Revising paragraph (d) introductory text.

The revisions read as follows:

§ 63.116 Process vent provisions—performance test methods and procedures to determine compliance.

(a) When a flare is used to comply with § 63.113(a)(1), the owner or operator shall comply with paragraphs

(a)(1) through (3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration.

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4).

(2) Determine the net heating value of the gas being combusted using the techniques specified in § 63.11(b)(6).

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

(b) * * *

(2) A boiler or process heater into which the gas stream is introduced with the primary fuel or is used as the primary fuel.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all vent streams and primary and secondary fuels introduced into the boiler or process heater.

* * * * *

(4) * * *

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total organic HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total organic HAP exiting the combustion device, respectively.

(d) An owner or operator using a combustion device followed by a scrubber or other halogen reduction device to control halogenated vent streams in compliance with § 63.113(c)(1) shall conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens.

* * * * *

11. Section 63.117 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(4)(iv);

c. Revising paragraph (a)(6) introductory text; and

d. Revising paragraph (a)(8).

The revisions read as follows:

§ 63.117 Process vents provisions—reporting and recordkeeping requirements for group and TRE determinations and performance tests.

(a) Each owner or operator subject to the control provisions for Group 1 process vents in § 63.113(a) or the provisions for Group 2 process vents with a TRE index value greater than 1.0 but less than or equal to 4.0 in § 63.113(d) shall:

* * * * *

(4) * * *

(iv) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, the percent reduction of organic HAP or TOC, or the concentration of organic HAP or TOC (parts per million by volume, by compound) determined as specified in § 63.116(c) at the outlet of the combustion device on a dry basis corrected to 3 percent oxygen.

* * * * *

(6) Record and report the following when using a scrubber following a combustion device to control a halogenated vent stream:

* * * * *

(8) Record and report the halogen concentration in the vent stream determined according to the procedures specified in § 63.115(d)(2)(v).

* * * * *

12. Section 63.118 is amended by:

a. Revising paragraph (a)(3);

b. Revising paragraph (e)(1);

c. Revising paragraph (f)(3); and

d. In paragraph (f)(5), revising the reference to ''paragraph (a)(2)(v) of this section'' to read ''paragraph (a)(2) of this section.''

The revisions read as follows:

§ 63.118 Process vent provisions—periodic reporting and recordkeeping requirements.

(a) * * *

(3) Hourly records of whether the flow indicator specified under § 63.114(d)(1) was operating and whether a diversion was detected at any time during the hour, as well as records of the times and durations of all periods when the gas stream is diverted to the atmosphere or the monitor is not operating.

* * * * *

(e) * * *

(1) Any process changes as defined in § 63.115(e) that increase the organic HAP concentration of the vent stream,

* * * * *

(f) * * *

(3) Reports of the times and durations of all periods recorded under paragraph (a)(3) of this section when the gas stream is diverted to the atmosphere through a bypass line.

* * * * *

13. Section 63.128 is amended by revising paragraph (b) and paragraph (h)(1)(ii) to read as follows:

§ 63.128 Transfer operations provisions—test methods and procedures.

* * * * *

(b) When a flare is used to comply with § 63.126(b)(2), the owner or operator shall comply with paragraphs (b)(1) through (3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration.

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4). The observation period shall be as specified in paragraph (b)(1)(i) or (ii) of this section instead of the 2-hour period specified in § 63.11(b)(4).

(i) If the loading cycle is less than 2 hours, then the observation period for that run shall be for the entire loading cycle.

(ii) If additional loading cycles are initiated within the 2-hour period, then visible emission observations shall be conducted for the additional cycles.

(2) Determine the net heating value of the gas being combusted, using the techniques specified in § 63.11(b)(6).

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

* * * * *

(h) * * *

(1) * * *

(ii) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760 degrees Celsius is used to meet the 98-percent emission reduction requirement, documentation that those conditions exist is sufficient to meet the requirements of paragraph (h)(1) of this section.

* * * * *

§ 63.130 [Amended]

14. Section 63.130 is amended by revising the reference in paragraph (d)(5) from ''paragraph (a)(2)(v) of this section'' to read ''paragraph (a)(2)(i) of this section.''

15. Section 63.132 is amended by revising paragraphs (a)(3) and (b)(4) to read as follows:

§ 63.132 Process wastewater provisions—general.

(a) * * *

(3) *Requirements for Group 2 wastewater streams.* For wastewater streams that are Group 2 for table 9 compounds, comply with the applicable recordkeeping and reporting requirements specified in §§ 63.146(b)(1) and 63.147(b)(8).

(b) * * *

(4) *Requirements for Group 2 wastewater streams.* For wastewater streams that are Group 2 for both table 8 and table 9 compounds, comply with the applicable recordkeeping and reporting requirements specified in §§ 63.146(b)(1) and 63.147(b)(8).

* * * * *

16. Section 63.138 is amended by:

a. Revising paragraph (i) introductory text;

b. Adding a sentence to the end of paragraph (i)(1) introductory text;

c. Amending the last sentence in paragraph (i)(2) introductory text by revising the reference to ''(i)(2)(iv) of this section'' to read ''(i)(3) of this section'';

d. Adding a sentence to the end of paragraph (i)(2)(i) introductory text;

e. Revising paragraph (i)(2)(iii); and

f. Redesignating paragraph (i)(2)(iv) as paragraph (i)(3).

The revisions and additions read as follows:

§ 63.138 Process wastewater provisions—performance standards for treatment processes managing Group 1 wastewater streams and/or residuals removed from Group 1 wastewater streams.

* * * * *

(i) *One megagram total source mass flow rate option.* A wastewater stream is exempt from the requirements of paragraphs (b) and (c) of this section if the owner or operator elects to comply with either paragraph (i)(1) or (2) of this section, and complies with paragraph (i)(3) of this section.

(1) * * * The owner or operator who meets the requirements of this paragraph (i)(1) is exempt from the requirements of §§ 63.133 through 63.137.

* * * * *

(2) * * *

(i) * * * When determining the total source mass flow rate for the purposes of paragraph (i)(2)(i)(B) of this section, the concentration and flow rate shall be determined at the location specified in paragraph (i)(2)(i)(B) of this section and not at the location specified in § 63.144(b) and (c).

* * * * *

(iii) The owner or operator of each waste management unit that receives, manages, or treats a partially treated wastewater stream prior to or during treatment shall comply with the requirements of §§ 63.133 through 63.137, as applicable. For a partially treated wastewater stream that is stored, conveyed, treated, or managed in a waste management unit meeting the requirements of §§ 63.133 through 63.137, the owner or operator shall follow the procedures in paragraph (i)(2)(i)(B) of this section to calculate mass flow rate. A wastewater stream, either untreated or partially treated, where the mass flow rate has been calculated following the procedures in paragraph (i)(2)(i)(A) of this section, is exempt from the requirements of §§ 63.133 through 63.137.

* * * * *

§ 63.140 [Amended]

17. Section 63.140 is amended by revising the reference to ''§ 63.147(c)(7)'' in the last sentence of paragraph (c) to read ''§ 63.147(b)(7).''

18. Section 63.145 is amended by revising paragraph (j) to read as follows:

§ 63.145 Process wastewater provisions—test methods and procedures to determine compliance.

* * * * *

(j) When a flare is used to comply with § 63.139(c), the owner or operator shall comply with paragraphs (j)(1) through (3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration.

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4).

(2) Determine the net heating value of the gas being combusted using the techniques specified in § 63.11(b)(6).

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

* * * * *

19. Section 63.146 is amended by:

a. Adding paragraph (b)(1);

b. Revising paragraph (b)(9) introductory text;

c. Removing paragraph (b)(9)(iii); and

d. Revising paragraph (d) introductory text.

The additions and revisions read as follows:

§ 63.146 Process wastewater provisions—reporting.

* * * * *

(b) * * *

(1) *Requirements for Group 2 wastewater streams.* This paragraph does not apply to Group 2 wastewater streams that are used to comply with § 63.138(g). For Group 2 wastewater streams, the owner or operator shall include the information specified in paragraphs (b)(1)(i) through (iv) of this section in the Notification of Compliance Status Report. This information may be submitted in any form. Table 15 of this subpart is an example.

(i) Process unit identification and description of the process unit.

(ii) Stream identification code.

(iii) For existing sources, concentration of table 9 compound(s) in parts per million, by weight. For new sources, concentration of table 8 and/or table 9 compound(s) in parts per million, by weight. Include documentation of the methodology used to determine concentration.

(iv) Flow rate in liter per minute.

* * * * *

(9) For each waste management unit or treatment process used to comply with § 63.138(b)(1), (c)(1), (e), (f), or (g), the owner or operator shall submit the information specified in either paragraph (b)(9)(i) or (ii) of this section.

* * * * *

(d) Except as provided in paragraph (f) of this section, for each treatment process used to comply with § 63.138(b)(1), (c)(1), (d), (e) , (f), or (g), the owner or operator shall submit as part of the next Periodic Report required by § 63.152(c) the information specified in paragraphs (d)(1), (2), and (3) of this section for the monitoring required by § 63.143(b), (c), and (d).

* * * * *

20. Section 63.147 is amended by:

a. Revising paragraph (b) introductory text;

b. Adding paragraph (b)(8);

c. Revising paragraph (d) introductory text and paragraph (d)(2); and

d. Adding paragraph (d)(3).

The revisions and additions read as follows:

§ 63.147 Process wastewater provisions—recordkeeping.

* * * * *

(b) The owner or operator shall keep in a readily accessible location the records specified in paragraphs (b)(1) through (8) of the section.

* * * * *

(8) *Requirements for Group 2 wastewater streams.* This paragraph

(b)(8) does not apply to Group 2 wastewater streams that are used to comply with § 63.138(g). For all other Group 2 wastewater streams, the owner or operator shall keep in a readily accessible location the records specified in paragraphs (b)(8)(i) through (iv) of this section.

(i) Process unit identification and description of the process unit.

(ii) Stream identification code.

(iii) For existing sources, concentration of table 9 compound(s) in parts per million, by weight. For new sources, concentration of table 8 and/or table 9 compound(s) in parts per million, by weight. Include documentation of the methodology used to determine concentration.

(iv) Flow rate in liter per minute.

* * * * *

(d) The owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day as specified in § 63.152(f), except as provided in paragraphs (d)(1) through (3) of this section.

* * * * *

(2) *Regenerative carbon adsorbers.* For regenerative carbon adsorbers, the owner or operator shall keep the records specified in paragraphs (d)(2)(i) and (ii) of this section instead of daily averages.

(i) Records of the total regeneration stream mass flow for each carbon bed regeneration cycle.

(ii) Records of the temperature of the carbon bed after each regeneration cycle.

(3) *Non-regenerative carbon adsorbers.* For non-regenerative carbon adsorbers using organic monitoring equipment, the owner or operator shall keep the records specified in paragraph (d)(3)(i) of this section instead of daily averages. For non-regenerative carbon adsorbers replacing the carbon adsorption system with fresh carbon at a regular predetermined time interval that is less than the carbon replacement interval that is determined by the maximum design flow rate and organic concentration in the gas stream vented to the carbon adsorption system, the owner or operator shall keep the records specified in paragraph (d)(3)(ii) of this section instead of daily averages.

(i)(A) Record of how the monitoring frequency, as specified in table 13 of this subpart, was determined.

(B) Records of when organic compound concentration of adsorber exhaust was monitored.

(C) Records of when the carbon was replaced.

(ii)(A) Record of how the carbon replacement interval, as specified in table 13 of this subpart, was determined.

(B) Records of when the carbon was replaced.

* * * * *

21. Section 63.150 is amended by:

a. Amending paragraph (a) by adding a sentence to the end of the paragraph;

b. Revising paragraph (g)(2) introductory text and paragraph (g)(2)(i);

c. Revising paragraph (g)(2)(iii)(B)(*2*);

d. Revising paragraph (m)(1)(i); and

e. Revising paragraph (m)(2)(i).

The revisions and additions read as follows:

§ 63.150 Emissions averaging provisions.

* * * * *

(a) * * * Notwithstanding the definition of process vent in § 63.101 and the sampling site designation in § 63.115(a), for purposes of this section the location of a process vent shall be defined, and the characteristics of its gas stream shall be determined, consistent with paragraph (g)(2)(i) of this section.

* * * * *

(g) * * *

(2) Emissions from process vents shall be calculated according to paragraphs (g)(2)(i) through (iii) of this section.

(i) The location of a process vent shall be defined, and the characteristics of its gas stream shall be determined at a point that meets the conditions in either paragraph (g)(2)(i)(A) or (B) of this section and the conditions in paragraphs (g)(2)(i)(C) through (E) of this section.

(A) The point is after the final recovery device (if any recovery devices are present).

(B) If a gas stream included in an emissions average is combined with one or more other gas streams after a final recovery device (if any recovery devices are present), then for each gas stream, the point is at a representative point after any final recovery device and as near as feasible to, but before, the point of combination of the gas streams.

(C) The point is before any control device (for process vents, recovery devices shall not be considered control devices).

(D) The point is before discharge to the atmosphere.

(E) The measurement site for determination of the characteristics of the gas stream was selected using Method 1 or 1A of 40 CFR part 60, appendix A.

* * * * *

(iii) * * *

(B) * * *

(*2*) For determining debits from Group 1 process vents, recovery devices shall not be considered control devices and cannot be assigned a percent reduction in calculating $EPV_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions is after the final recovery device. However, as provided in § 63.113(a)(3), a Group 1 process vent may add sufficient recovery to raise the TRE index value above 1.0, thereby becoming a Group 2 process vent.

* * * * *

(m) * * *

(1) * * *

(i) Determine, consistent with paragraph (g)(2)(i) of this section, whether the process vent is Group 1 or Group 2 according to the procedures in § 63.115.

* * * * *

(2) * * *

(i) Determine, consistent with paragraph (g)(2)(i) of this section, the flow rate, organic HAP concentration, and TRE index value using the methods specified in § 63.115;

* * * * *

22. Section 63.151 is amended by revising paragraph (b)(1)(iii) and by revising paragraph (e)(1) to read as follows:

§ 63.151 Initial notification.

* * * * *

(b) * * *

(1) * * *

(iii) An identification of the kinds of emission points within the source that are subject to this subpart;

* * * * *

(e) * * *

(1) A list designating each emission point complying with §§ 63.113 through 63.149 and whether each emission point is Group 1 or Group 2, as defined in § 63.111. For each process vent within the source, provide the information listed in paragraphs (e)(1)(i) through (iv) of this section.

(i) The chemical manufacturing process unit(s) that is the origin of all or part of the vent stream that exits the process vent.

(ii) The type(s) of unit operations (*i.e.,* an air oxidation reactor, distillation unit, or reactor) that creates the vent stream that exits the process vent.

(iii) For a Group 2 process vent, the last recovery device, if any.

(iv) For a Group 1 process vent, the control device, or other equipment used for compliance.

* * * * *

23. Section 63.152 is amended by adding a new paragraph (b)(6), revising paragraph (c)(4)(iv), and adding a new paragraph (d)(4) to read as follows:

§ 63.152 General reporting and continuous records.

* * * * *

(b) * * *

(6) An owner or operator complying with § 63.113(i) shall include in the Notification of Compliance Status, or where applicable, a supplement to the Notification of Compliance Status, the name and location of the transferee, and the identification of the Group 1 process vent.

* * * * *

(c) * * *

(4) * * *

(iv) For gas streams sent for disposal pursuant to § 63.113(i) or for process wastewater streams sent for treatment pursuant to § 63.132(g), reports of changes in the identity of the transferee.

* * * * *

(d) * * *

(4) If an owner or operator transfers for disposal a gas stream that has the characteristics specified in § 63.107(b) through (h) or meets the criteria specified in § 63.107(i) to an off-site location or an on-site location not owned or operated by the owner or operator of the source and the vent stream was not included in the information submitted with the Notification of Compliance Status or a previous periodic report, the owner or operator shall submit a supplemental report. The supplemental report shall be submitted no later than July 23, 2001 or with the next periodic report, whichever is later. The report shall provide the information listed in paragraphs (d)(4)(i) through (iv) of this section.

(i) The chemical manufacturing process unit(s) that is the origin of all or part of the vent stream that exits the process vent.

(ii) The type(s) of unit operations (*i.e.,* an air oxidation reactor, distillation unit, or reactor) that creates the vent stream that exits the process vent.

(iii) For a Group 2 process vent, the last recovery device, if any.

(iv) For a Group 1 process vent, the identity of the transferee.

* * * * *

Appendix to Subpart G—[Amended]

24. The appendix to subpart G is amended by:

a. Revising table 12;

b. Revising footnote f to table 17; and

c. Revising table 20.

The revisions read as follows:

Appendix to Subpart G—Tables and Figures

* * * * *

TABLE 12.—MONITORING REQUIREMENTS FOR TREATMENT PROCESSES

To comply with	Parameters to be monitored	Frequency	Methods
1. Required mass removal of Table 8 and/or Table 9 compound(s) from wastewater treated in a properly operated biological treatment unit, § 63.138(f), and § 63.138(g).	Appropriate parameters as specified in § 63.143(c) and approved by permitting authority.	Appropriate frequency as specified in § 63.143 and approved by permitting authority.	Appropriate methods as specified in § 63.143 and as approved by permitting authority.
2. Steam stripper	(i) Steam flow rate; and	Continuously	Integrating steam flow monitoring device equipped with a continuous recorder.
	(ii) Wastewater feed mass flow rate; and	Continuously	Liquid flow meter installed at stripper influent and equipped with a continuous recorder.
	(iii) Wastewater feed temperature; or (iv) Column operating temperature.	Continuously	(A) Liquid temperature monitoring device installed at stripper influent and equipped with a continuous or recorder; or (B) Liquid temperature monitoring device installed in the column top tray liquid phase (*i.e.,* at the downcomer) and equipped with a continuous recorder.
3. Other treatment processes or alternative monitoring parameters to those listed in item 2 of this table.	Other parameters may be monitored upon approval from the Administrator with the requirements specified in § 63.151(f).		

TABLE 17.—INFORMATION FOR TREATMENT PROCESSES TO BE SUBMITTED WITH NOTIFICATION OF COMPLIANCE STATUS [a, b]

* * * * * * *

[f] Parameter(s) to be monitored or measured in accordance with Table 12 and § 63.143.

* * * * *

TABLE 20.—WASTEWATER—PERIODIC REPORTING REQUIREMENTS FOR CONTROL DEVICES SUBJECT TO § 63.139 USED TO COMPLY WITH §§ 63.13 THROUGH 63.139

Control device	Reporting requirements
(1) Thermal Incinerator	Report all daily average [a] temperatures that are outside the range established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected [c].

TABLE 20.—WASTEWATER—PERIODIC REPORTING REQUIREMENTS FOR CONTROL DEVICES SUBJECT TO § 63.139 USED TO COMPLY WITH §§ 63.13 THROUGH 63.139—Continued

Control device	Reporting requirements
(2) Catalytic Incinerator	(i) Report all daily average [a] upstream temperatures that are outside the range established in the NCS [b] or operating permit. (ii) Report all daily average [a] temperature differences across the catalyst bed that are outside the range established in the NCS [b] or operating permit. (iii) Report all operating days when insufficient monitoring data are collected [c].
(3) Boiler or Process Heater with a design heat input capacity less than 44 megawatts and vent stream is not mixed with the primary fuel.	Report all daily average [a] firebox temperatures that are outside the range established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected [c].
(4) Flare	Report the duration of all periods when all pilot flames are absent.
(5) Condenser	Report all daily average [a] exit temperatures that are outside the range established in the NCS [b] or operating permit and all operating days when insufficient monitoring data are collected [c].
(6) Carbon Adsorber (Regenerative)	(i) Report all carbon bed regeneration cycles when the total regeneration stream mass or volumetric flow is outside the range established in the NCS [b] or operating permit. (ii) Report all carbon bed regeneration cycles during which the temperature of the carbon bed after regeneration is outside the range established in the NCS [b] or operating permit. (iii) Report all operating days when insufficient monitoring data are collected [c].
(7) Carbon Adsorber (Non-Regenerative)	(i) Report all operating days when inspections not done according to the schedule developed as specified in table 13 of this subpart. (ii) Report all operating days when carbon has not been replaced at the frequency specified in table 13 of this subpart.
(8) All Control Devices	(i) Report the times and durations of all periods when the vent stream is diverted through a bypass line or the monitor is not operating, or (ii) Report all monthly inspections that show the valves are moved to the diverting position or the seal has been changed.

[a] The daily average is the average of all values recorded during the operating day, as specified in § 63.147(d).
[b] NCS = Notification of Compliance Status described in § 63.152.
[c] The periodic reports shall include the duration of periods when monitoring data are not collected for each excursion as defined in § 63.152(c)(2)(ii)(A).

* * * * *

Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

25. Section 63.180 is amended by revising paragraph (e) to read as follows:

§ 63.180 Test methods and procedures.

* * * * *

(e) When a flare is used to comply with § 63.172(d), the owner or operator shall comply with paragraphs (e)(1) through (3) of this section. The owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet organic HAP or TOC concentration.

(1) Conduct a visible emission test using the techniques specified in § 63.11(b)(4).

(2) Determine the net heating value of the gas being combusted using the techniques specified in § 63.11(b)(6).

(3) Determine the exit velocity using the techniques specified in either § 63.11(b)(7)(i) (and § 63.11(b)(7)(iii), where applicable) or § 63.11(b)(8), as appropriate.

* * * * *

Appendix C—[Amended]

26. Appendix C to part 63 is amended by:

a. Revising the third paragraph in section I;

b. Revising the introductory text in section III;

c. Revising Eqn App. C–4 in section III.D.1 and the paragraph preceding it;

d. Revising Eqn App. C–6 in section III.D.2 and the paragraph preceding it;

e. Adding section III.E;

f. Adding references 7 and 8 to the References section;

g. Revising Figure 1; and

h. Adding Form XIII.

The additions and revisions read as follows:

Appendix C to Part 63

Determination of the Fraction Biodegraded (f_{bio}) in a Biological Treatment Unit

I. Purpose

* * * * *

Unless otherwise specified, the procedures presented in this appendix are designed to be applied to thoroughly mixed treatment units. A thoroughly mixed treatment unit is a unit that is designed and operated to approach or achieve uniform biomass distribution and organic compound concentration throughout the aeration unit by quickly dispersing the recycled biomass and the wastewater entering the unit. Detailed discussion on how to determine if a biological treatment unit is thoroughly mixed can be found in reference 7. Systems that are not thoroughly mixed treatment units should be subdivided into a series of zones that have uniform characteristics within each zone. The number of zones required to characterize a biological treatment system will depend on the design and operation of the treatment system. Detailed discussion on how to determine the number of zones in a biological treatment unit and examples of determination of f_{bio} can be found in reference 8. Each zone should then be modeled as a separate unit. The amount of air emissions and biodegradation from the modeling of these separate zones can then be added to reflect the entire system.

* * * * *

III. Procedures for Determination of f_{bio}

The first step in the analysis to determine if a biological treatment unit may be used without being covered and vented through a closed-vent system to an air pollution control device is to determine the compound-specific f_{bio}. The following procedures may be used to determine f_{bio}:

(1) The EPA Test Method 304A or 304B (appendix A, part 63)—Method for the Determination of Biodegradation Rates of Organic Compounds,

(2) Performance data with and without biodegradation,

(3) Inlet and outlet concentration measurements,

(4) Batch tests,

(5) Multiple zone concentration measurements.

All procedures must be executed so that the resulting f_{bio} is based on the collection system and waste management units being in compliance with the rule. If the collection system and waste management units meet the suppression requirements at the time of the test, any of the procedures may be chosen. If the collection system and waste management units are not in compliance at the time of the performance test, then only Method 304A, B,

or the batch test shall be chosen. If Method 304A, B, or the batch test is used, any anticipated changes to the influent of the full-scale biological treatment unit that will occur after the facility has enclosed the collection system must be represented in the influent feed to the benchtop bioreactor unit, or test unit.

Select one or more appropriate procedures from the five listed above based on the availability of site specific data and the type of mixing that occurs in the unit (thoroughly mixed or multiple mixing zone). If the facility does not have site-specific data on the removal efficiency of its biological treatment unit, then Procedure 1 or Procedure 4 may be used. Procedure 1 allows the use of a benchtop bioreactor to determine the first-order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 4 explains two types of batch tests which may be used to estimate the first order biodegradation rate constant. An owner or operator may elect to assume the first order biodegradation rate constant is zero for any regulated compound(s) present in the wastewater. Procedure 3 would be used if the facility has, or measures to determine, data on the inlet and outlet individual organic compound concentration for the biological treatment unit. Procedure 3 may only be used on a thoroughly mixed treatment unit. Procedure 5 is the concentration measurement test that can be used for units with multiple mixing zones. Procedure 2 is used if a facility has or obtains performance data on a biotreatment unit prior to and after addition of the microbial mass. An example where Procedure 2 could be used is an activated sludge unit where measurements have been taken on inlet and exit concentration of organic compounds in the wastewater prior to seeding with the microbial mass and startup of the unit. The flow chart in figure 1 outlines the steps to use for each of the procedures.

* * * * *

D. Batch Tests (Procedure 4)

* * * * *

1. * * *

Equation App. C–3 can be integrated to obtain the following equation:

$$-t = \frac{VK_s}{A}\ln\left(\frac{s}{s_0}\right) + \frac{Q_m X V^2}{AB}\ln\left(\frac{A+Bs}{A+Bs_0}\right) \qquad \text{(Eqn App. C-4)}$$

Where:

$A = GK_{eq}K_s + Q_mVX$

$B = GK_{eq}$

S_o = test compound concentration at t=0

* * * * * * *

2. * * *

Equation App. C–5 can be solved analytically to give:

$$t = \frac{-\left(V_g K_{eq} + V_l\right)}{V_l Q_m X}\left[\left(s - s_0\right) + K_s \ln\left(\frac{s}{s_0}\right)\right] \qquad \text{(Eqn App. C-6)}$$

* * * * *

E. Multiple Zone Concentration Measurements (Procedure 5)

Procedure 5 is the concentration measurement method that can be used to determine the f_{bio} for units that are not thoroughly mixed and thus have multiple zones of mixing. As with the other procedures, proper determination of f_{bio} must be made on a system as it would exist under the rule. For purposes of this calculation, the biological unit must be divided [1] into zones with uniform characteristics within each zone. The number of zones that is used depends on the complexity of the unit. Reference 8, ''Technical Support Document for the Evaluation of Aerobic Biological Treatment Units with Multiple Mixing Zones,'' is a source for further information concerning how to determine the number of zones that should be used for evaluating your unit. The following information on the biological unit must be available to use this procedure: basic unit variables such as inlet and recycle wastewater flow rates, type of agitation, and operating conditions; measured representative organic compound concentrations in each zone and the inlet and outlet; and estimated mass transfer coefficients for each zone.

Reference 8 ''Technical Support Document for the Evaluation of Aerobic Biological Treatment Units with Multiple Mixing Zones,'' is a source for further information concerning how to interpolate the biorates for multiple zones. In units with well-characterized concentration measurements obtained in an initial evaluation of the unit, it may be possible to demonstrate that there is a good correlation of the component concentrations with the locations in the multiple-zone unit. With this good correlation, it may be possible to accurately predict the concentrations in selected zones without actually testing each selected zone. This correlation method may be used for units that have many zones (greater than 5) or where one of the interior zones is not readily accessible for sampling. To use this correlation method of estimating zone concentrations, it is necessary to measure the concentrations in the inlet unit, the exit unit, and sufficient interior units to obtain a correlation of component concentrations with the locations. You cannot use this correlation method of estimating selected zone concentrations if monitoring of each zone is required, or if the accuracy and precision of the correlation is inferior to actual individual sampling error. The accuracy and precision of the correlation may be improved by increasing the number of locations tested. Because the correlation is based on many samples, it should provide an accurate representation of a stable operating system.

The estimated mass transfer coefficient for each compound in each zone is obtained from Form II using the characteristics of each zone. A computer model may be used. If the Water7 model or the most recent update to this model is used, then use Form II–A to calculate KL. The TOXCHEM or BASTE model may also be used to calculate KL for the biological treatment unit, with the stipulations listed in Procedure 304B. Compound concentration measurements for each zone are used in Form XIII to calculate the f_{bio}. A copy of Form XIII is completed for each of the compounds of concern treated in the biological unit.

* * * * *

References

* * * * *

7. Technical Support Document for Evaluation of Thoroughly Mixed Biological Treatment Units. November 1998.

8. Technical Support Document for the Evaluation of Aerobic Biological Treatment Units with Multiple Mixing Zones. July 1999.

* * * * *

BILLING CODE 6560–50–P

[1] This is a mathematical division of the actual unit; not addition of physical barriers.

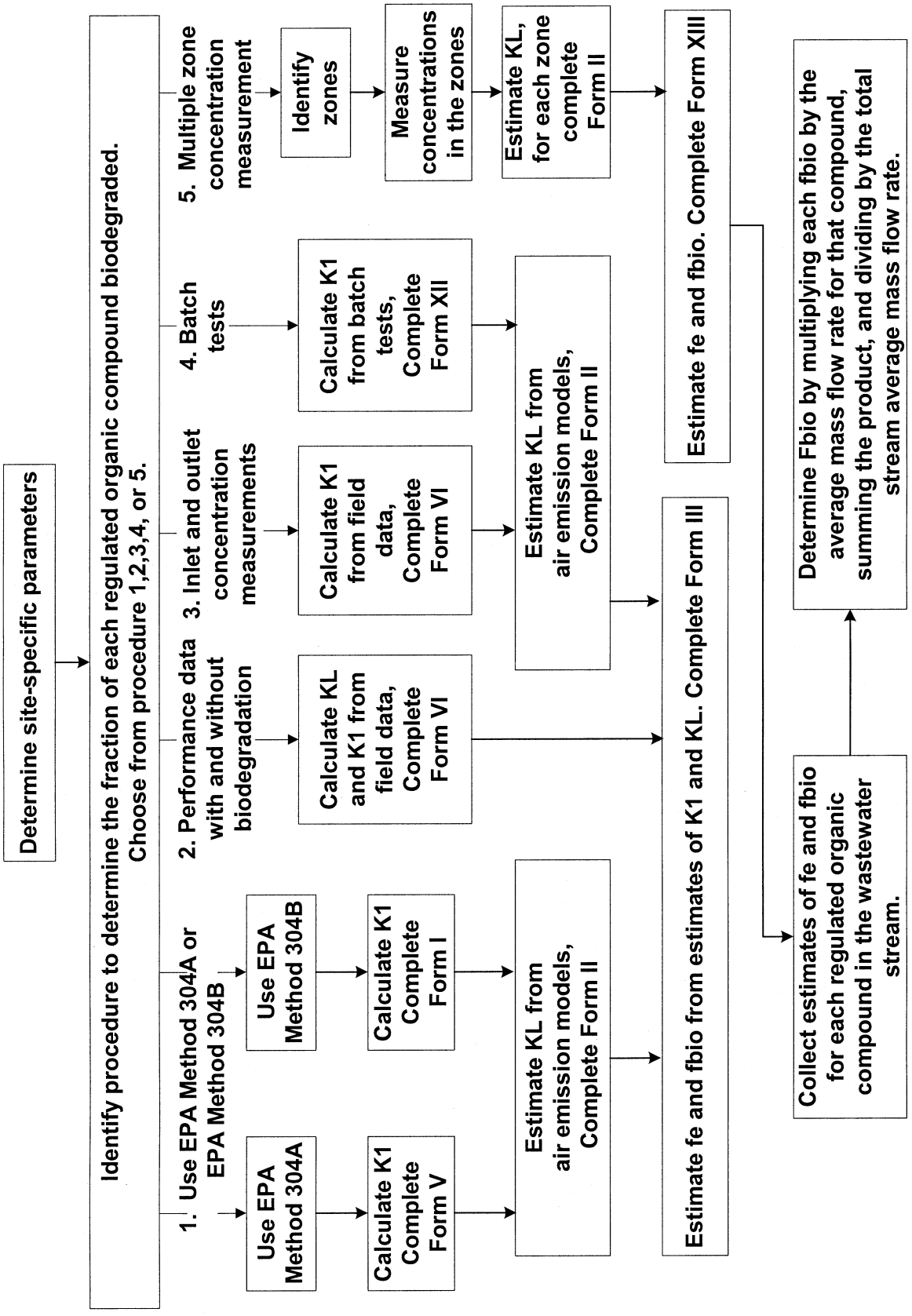

Figure 1. ALTERNATIVE EXPERIMENTAL METHODS FOR DETERMINING THE FRACTION OF ORGANIC COMPOUND BIODEGRADED (Fbio) IN A BIOLOGICAL TREATMENT UNIT

FORM XIII. DATA FORM FOR THE ESTIMATION OF MULTIPLE ZONE BIODEGRADATION FROM UNIT CONCENTRATIONS

NAME OF THE FACILITY for site specific biorate determination		
COMPOUND for site specific biorate determination		
Number of zones in the biological treatment unit	1	
VOLUME of full-scale system (cubic meters)	2	
Average DEPTH of the full-scale system (meters)	3	
FLOW RATE of wastewater treated in the unit (m3/s)	4	
Recycle flow of wastewater added to the unit, if any (m3/s)	5	
Concentration in the wastewater treated in the unit (mg/L)	6	
Concentration in the recycle flow, if any (mg/L)	7	
Concentration in the effluent (mg/L).	8	

TOTAL INLET FLOW (m3/s) line 4 plus the number on line 5	9	
TOTAL RESIDENCE TIME (s) line 2 divided by line 9.	10	
TOTAL AREA OF IMPOUNDMENT (m2) line 2 divided by line 3	11	

Zone number	Concentration for zone, Ci (mg/L)		Area of the zone, A (m2)	Estimate of KL in the zone (m/s) from Form II		AIR STRIPPING KL A Ci (g/s)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
TOTALS sum for each zone.		12			13	

Removal by air stripping (g/s). Line 13.	14	
Loading in effluent (g/s). Line 8 times line 9.	15	
Total loading (g/s). (Line 5 * line 7) + (line 4* line 6).	16	
Removal by biodegradation (g/s) Line 16 minus (line 14 + line 15).	17	
Fraction biodegraded: Divide line 17 by line 16..	18	
Fraction air emissions: Divide line 14 by line 16.	19	
Fraction remaining in unit effluent: Divide line 15 by line 16.	20	

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Monday,

January 22, 2001

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 177 and 178

Hazardous Materials: Revision to Standards for Infectious Substances and Genetically Modified Micro-Organisms; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 177, and 178

[Docket No. RSPA–98–3971 (HM–226)]

RIN 2137–AD13

Hazardous Materials: Revision to Standards for Infectious Substances and Genetically Modified Micro-Organisms

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: RSPA is proposing to revise transportation requirements for infectious substances, including regulated medical waste, by adopting defining criteria and packaging requirements for infectious substances and genetically modified micro-organisms that are consistent with international standards; revising the current broad exceptions for diagnostic specimens and biological products; and authorizing bulk packaging options for regulated medical waste consistent with requirements in international standards and DOT exemptions. These proposals are intended to assure an acceptable level of safety for the transportation of infectious substances and to facilitate domestic and international transportation.

DATES: *Comments.* Submit comments by April 23, 2001. To the extent possible, we will consider comments received after this date in making our decision on a final rule.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify Docket Number RSPA–98–3971 (HM–226) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System web site at ''http://dms.dot.gov/'' and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. You can also review comments on-line at the DOT Dockets Management System web site at ''http://dms.dot.gov/.''

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson or Susan Gorsky (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration.

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I. Background

On September 2, 1998, the Research and Special Programs Administration (RSPA, we) published an advance notice of proposed rulemaking (ANPRM) on revisions to the current requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) applicable to the transportation of infectious substances, Division 6.2, including regulated medical waste (63 FR 46844). We asked a variety of questions concerning classification criteria, hazard communication, and packaging requirements for infectious substances consistent with international standards; revisions to the current exceptions in the HMR for diagnostic specimens and biological products; and additional packaging requirements for regulated medical waste (RMW).

In addition, we conducted an electronic public meeting on the Internet from September 14–16, 1998, to facilitate public comment on the issues discussed in the ANPRM. For the Internet meeting, we posted the questions listed in the ANPRM and additional questions to encourage commenters to provide specific quantitative information relative to the transportation of infectious substances.

We received 89 comments in response to the ANPRM and the Internet meeting. Several commenters submitted more than one response. Most comments came from industry associations, colleges and universities, laboratories, and medical waste transporters. Comments were also submitted by state veterinary laboratories, state departments of agriculture, health insurance companies, a blood supplier, equipment suppliers, private citizens, a fire department, a union, and the U.S. Department of Agriculture.

II. Need for New Regulations

Many commenters question the need for increased regulation of infectious substances. They cite their experience with transporting these materials to support their view that there is little or no safety risk associated with such transportation and, thus, no justification for the changes proposed in the ANPRM. Commenters further assert that the proposed packaging and hazard communication requirements will impose significant transportation costs that are not justified by the safety risks involved with shipping infectious substances.

We do not agree that there is little risk associated with the transportation of infectious substances. RSPA's Hazardous Materials Information System (HMIS) includes reports of carriers discovering leaking, unlabeled packages containing blood and other potentially infectious material and of packages containing infectious materials being damaged in handling and releasing their contents. The Centers for Disease Control receives about 400 reports each year from carriers who detect leakage or other damage to packages of infectious substances. Releases of infectious substances in transportation present the possibility of exposure for transportation workers and the general public and can result in costly shipping delays and clean-up efforts.

Further, as a result of a provision in the accident reporting requirements in the HMR and the wording of the INFECTIOUS SUBSTANCE label, many releases of infectious substances are reported to CDC rather than to RSPA. Although the HMR require incident information reported to CDC also to be

reported to RSPA in a written incident report, carriers do not routinely do so. This has resulted in under-reporting of these incidents in RSPA's HMIS data base.

Over the last several years, individuals and companies commenting on infectious substances rulemakings or on their own initiative have reported information concerning infectious substance releases. These reports include blood pouring from roll-offs and freight containers transporting regulated medical waste (RMW), the disposal of HIV-contaminated blood in municipal waste cans, overturned vehicles that have released diagnostic specimens on highways, ruptured packages containing diagnostic specimens being transported by aircraft, releases of treatment-resistant diseases from inadequate packaging, and used sharps that puncture inner packagings.

Because of these reports and our own findings, we believe that the current regulatory requirements applicable to transportation of Division 6.2 materials should be strengthened. Accordingly, in this NPRM, we are proposing the following changes to the HMR:

- Adoption of new classification criteria for infectious substances based on defining criteria developed by the World Health Organization and consistent with standards contained in the United Nations Recommendations on the Transport of Dangerous Goods and the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air.
- Revision of current packaging requirements for Division 6.2 materials for consistency with international performance standards.
- Elimination of the current exception from requirements in the HMR for diagnostic specimens to impose certain packaging and hazard communication requirements. Diagnostic specimens transported in dedicated motor vehicles by private or contract carriers would continue to be excepted from most requirements in the HMR.
- Modification of the current exception from requirements in the HMR for biological products, limiting the exception to biological products licensed for use under current regulations of the Food and Drug Administration or U.S. Department of Agriculture.
- New transportation requirements for the transportation of genetically modified micro-organisms consistent with international requirements.
- New bulk packaging options for the transportation of RMW, based on current exemption provisions.
- New hazard communication requirements for shipments of Division 6.2 materials.

III. Summary of Proposals in NPRM

A. Classification Criteria for Infectious Substances

In the ANPRM, we indicated that we are considering revising the classification criteria for infectious substances consistent with the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations) and the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions). In particular, we said we are considering adopting the risk groups and defining criteria developed by the World Health Organization (WHO) for Division 6.2 materials.

Commenters who support international harmonization of the classification criteria for infectious substances note that the proposal in the ANPRM would facilitate shipment of infectious substances in international commerce and by aircraft. Commenters opposed to the proposal are concerned about the possible misinterpretation and misapplication of the WHO risk group criteria. These commenters believe that the WHO risk group definitions are poorly worded and subject to broad interpretation and, as a result, assigning materials to risk group categories may be difficult or impossible.

As we stated in the ANPRM, the hazards posed by Division 6.2 materials vary greatly depending on the pathogenicity of the organism, the mode and relative ease of transmission, and other factors (63 FR 46845). It should be noted that determining if a material is infectious has always included subjective analysis in the absence of actual testing. Classifying these materials based on the level of risk and applying transportation requirements commensurate with that risk should ensure an adequate level of safety without imposing an undue burden on the regulated community. International harmonization of transportation standards also facilitates foreign trade and helps U.S. companies compete in the global economy. Most passenger and cargo air carriers currently require shipments of Division 6.2 materials to conform to the international standards.

Thus, in this NPRM, we are proposing to define Division 6.2 materials using the WHO risk group criteria. The proposal would require Division 6.2 materials to be assigned to risk groups based on the degree to which they cause injury through disease, with Risk Group 1 presenting the lowest risk and Risk Group 4 presenting the highest risk. Assignment to a risk group would be based on the known medical history of the patient or animal, endemic local conditions, symptoms of the patient or animal, or professional judgement concerning the individual circumstances of the patient or animal. Division 6.2 materials assigned to Risk Group 1 would be excepted from requirements in the HMR.

Commenters to the ANPRM are concerned that updated lists indicating risk group assignments for specific pathogens are difficult to obtain. We are aware of several organizations that maintain such lists. The American Biological Safety Association (ABSA) lists bacteria, fungi, viruses, and parasites according to their assigned risk groups. These lists can be found on-line at the ABSA web site (*http://www.absa.org/*). In addition, the ABSA web site includes links to risk group listings from Canada (in Health Canada's Laboratory Biosafety Guidelines at *http://www.hc-sc.gc.ca/hpb/lcdc/biosafty/docs/index.html)* and to Belguim's Biosafety Server (*http://biosafety.ihe.be/)*, which includes information on European regulation of infectious substances. The ABSA web site also includes information on the regulation of infectious substances in Australia, Brazil, Japan, and New Zealand at *http://biosafety.ihe.be/Menu/BiosWorld.html*. We plan to work with WHO and CDC to assure that updated guidance for determining the risk groups for specific materials is easily available.

B. Packaging Requirements for Infectious Substances

The HMR currently require an infectious substance to be packaged in a triple packaging that includes a water-tight primary receptacle, a water-tight secondary packaging, and an outer packaging. The primary receptacle or secondary packaging must be capable of withstanding, without leakage, an internal pressure that produces a pressure differential of not less than 95kPa (0.95 bar, 14 psi) and temperatures in the range of −40 °C to +55 °C (−40 °F to +131 °F). The triple packaging must be capable of passing the performance tests specified in § 178.609.

In this NPRM, we propose to incorporate several changes to the packaging requirements and performance tests to make them

consistent with the UN Recommendations and ICAO Technical Instructions. For example, we propose to require manufacturers to mark packagings represented as conforming to the specifications for infectious substances packagings in the HMR consistent with UN marking requirements. In addition, we propose to require manufacturers to retain packaging design qualification records and to retest packagings every 24 months. Further, we propose to replace the current requirement for a water immersion test with a water-spray test that simulates exposure to rainfall, as required by the ICAO Technical Instructions. Similarly, we propose to incorporate the selective testing provisions in the UN Recommendations and ICAO Technical Instructions to allow variations in the primary receptacles within the secondary packaging without further testing of the completed package if an equivalent level of performance is maintained.

C. Exceptions for Domestic Shipments of Infectious Substances

In the September 1998 ANPRM, we noted that we are considering several exceptions from HMR requirements for domestic shipments of infectious substances by motor carrier. For example, the HMR include exceptions from most requirements of the HMR for hazardous materials transported as materials of trade. Materials of trade include hazardous materials carried by private motor carriers engaged in a principal business other than transportation, such as lawn care, plumbing, welding, and door-to-door sale of consumer goods. The materials of trade exception limits the maximum gross weight of materials of trade that may be carried on a motor vehicle and includes minimum packaging and hazard communication requirements.

In the ANPRM, we invited comments on expanding the materials of trade exception to permit certain biological products, diagnostic specimens, and RMW to be transported by private carriage as materials of trade. Commenters opposed to a materials of trade exception for infectious substances assert that such an exception would not provide an adequate level of safety for transporting infectious materials. Commenters who support a materials of trade exception note that it would reduce potential transportation costs, particularly if we remove the current exceptions in the HMR for diagnostic specimens and biological products.

In this NPRM, we are proposing to expand the materials of trade exceptions currently permitted under § 173.6 of the HMR to include certain biological products, diagnostic specimens, and RMW, including cultures and stocks. As proposed, this exception does not apply to materials known to contain or suspected of containing infectious substances in Risk Group 4.

The proposed exception specifies that the material must be contained in combination packagings consisting of one or more inner packagings inside an outer packaging. The capacity of each inner packaging may not exceed 0.5 kg (1.1 pound) or 0.5 L (17 ounces), and the capacity of the outer packaging may not exceed 4 kg (8.8 pounds) or 4 L (1 gallon). The proposed exception also permits combination packagings consisting of a single inner packaging with a capacity that does not exceed 16 kg (35.2 pounds) or 16 L (4.2 gallons) contained inside a single outer packaging. For RMW in combination packagings, each inner packaging may not exceed 4 kg (8.8 pounds) or 4 L (1 gallon) and the outer packaging may not exceed 16 kg (35.2 pounds) or 16 L (4.2 gallons). Under this proposal, infectious substances transported as materials of trade are subject to the general packaging, hazard communication, and motor vehicle operator notification requirements currently specified in § 173.6. The proposed materials of trade exception would apply to entities such as home health care providers and diagnostic laboratories that transport smaller amounts of infectious substances. We believe that the increased knowledge of the personnel handling these materials, most of whom are trained in the requirements of the Occupational Safety and Health Administration's (OSHA) Universal Precaution regulations for handling potentially contaminated material, will substantially reduce the risks associated with their transportation. In addition, the exception imposes minimum packaging requirements, at minimal cost, for materials currently excepted from the HMR.

D. Diagnostic Specimens

In the ANPRM, we proposed removing the existing broad exception from the HMR for diagnostic specimens and creating a regulatory system based on the WHO risk group definitions that requires diagnostic specimens to be packaged, described, and transported in a manner consistent with their level of risk. We proposed retaining the broad exception from the HMR for diagnostic specimens assigned to Risk Group 1 only. Further, we proposed exceptions to distinguish between a diagnostic specimen known or suspected to contain an infectious substance and one sent for routine testing.

The majority of comments we received in response to the ANPRM address the proposed regulations for diagnostic specimens. Most commenters oppose increased regulation for diagnostic specimens, suggesting that the proposed regulations are not justified by the safety record and will be difficult and costly to implement. Commenters further state that the proposed regulations could result in shipment delays, making early detection and treatment of disease difficult. Commenters note that shippers of diagnostic specimens may have little or no knowledge of what pathogens a given specimen may contain, making application of the WHO risk groups to such materials difficult, at best. Finally, commenters state that the proposed regulations could significantly increase health care costs.

Commenters who support regulation of diagnostic specimens note that releases of these materials do occur in transportation. These commenters generally support removal of the current exception from the HMR for diagnostic specimens to ensure packaging quality and to protect transportation workers and the general public from the risk of exposure to potentially infectious materials.

We agree with commenters that diagnostic specimens should be subject to regulation under the HMR. Our HMIS data base includes reports of packages containing these materials that were damaged in transportation, resulting in delays and possible risk to cargo handlers, flight crews, emergency responders, and the general public. However, we also agree with commenters that the regulatory requirements proposed in the ANRPM could increase transportation costs for shipment of these materials.

Accordingly, in this NPRM, we are proposing regulations applicable to the transportation of diagnostic specimens that are consistent with proposed amendments to the UN Recommendations. We propose a new entry in the Hazardous Materials Table—''Diagnostic Specimen.'' There is no UN number, hazard warning label, or packing group assignment.

Under this proposal, diagnostic specimens meeting the definition of a Risk Group 4 material are classed and transported as Division 6.2 materials, UN 2814 or UN 2900. All other diagnostic specimens must be packaged in primary receptacles packed inside secondary packaging to preclude breakage, punctures, or leakage, and, for liquids, with sufficient absorbent

material to absorb the entire contents of the primary receptacle. The secondary packaging must be secured in outer packagings with suitable cushioning material. For liquids transported by aircraft, either the primary receptacle or the secondary packaging must be capable of withstanding an internal pressure producing a pressure differential of at least 95kPa (0.95 bar, 14 psi). The completed package must be capable of passing a drop test from a height of at least 1.2 meters (3.9 feet). The package must be marked with the words ''Diagnostic Specimens.'' Diagnostic specimens shipped in conformance with these proposed provisions are excepted from other requirements in the HMR, except that diagnostic specimens transported on board aircraft are subject to the incident reporting requirements in §§ 171.15 and 171.16. Under this proposal, offerors and transporters of diagnostic specimens must be informed of the diagnostic specimen packaging requirements.

In addition to the materials of trade exception discussed above, we are also proposing a complete exception from the HMR for diagnostic specimens transported by private or contract motor carriers. Based on comments received in response to the ANPRM, it is our understanding that most diagnostic specimens are shipped from collection sites (e.g., physicians' offices, nursing homes, clinics, etc.) to testing laboratories by private or contract couriers in dedicated vehicles. The couriers are familiar with the materials they transport and trained in the application of the OSHA Universal Precautions for handling materials that may contain infectious substances. Our proposal would require couriers to be informed about the materials they are transporting. This proposed exception will enable the transportation of diagnostic specimens quickly, efficiently, and safely to testing laboratories.

It should be noted that waste diagnostic specimens—that is, diagnostic specimens that meet the proposed definition for RMW in this NPRM—could not be transported under the exceptions proposed in this NPRM for the transportation of diagnostic specimens. Waste diagnostic specimens would lose their identity as diagnostic specimens for purposes of the HMR and would have to be transported in accordance with the HMR requirements applicable to RMW.

Taken together, we believe that these proposals for the transportation of diagnostic specimens are cost-effective, practical, and easy to understand and implement. Most important, these proposals will assure an adequate level of safety.

E. Biological Products

Commenters to the ANPRM generally support its proposals concerning transportation of biological products. Under current provisions, biological products are excepted from the HMR provided they meet Food and Drug Administration (FDA) or U.S. Department of Agriculture (USDA) regulations governing the transfer of biological products. In this NPRM, we propose to limit this exception to biological products that meet the definition of a Risk Group 1 material or are licensed for use under current FDA or USDA regulations. We propose to require unlicensed biological products meeting the definition of a Risk Group 2, 3, or 4 infectious substance to be classed as infectious substances, Division 6.2, and packaged in specification packagings authorized for the transportation of infectious substances.

In addition, we are proposing to add a special provision in § 172.102, consistent with ICAO Technical Instruction Special Provision A81, to except blood and blood products from current quantity limits for shipments by air when the materials are packaged in primary receptacles that do not exceed 500 ml (17 ounces) and contained in outer packagings not exceeding 4 L (1 gallon).

We also propose to except from all HMR requirements blood collected for blood transfusions, blood collected for the preparation of blood products, blood products intended for transplant, and tissues and organs intended for transplant.

It should be noted that waste biological products—that is, biological products that meet the proposed definition for RMW in this NPRM—may not be transported under the exceptions proposed in this NPRM for the transportation of biological products. Waste biological products lose their identity as biological products for purposes of the HMR and, if they contain infectious substances, must be transported in accordance with the HMR requirements applicable to RMW.

F. Genetically Modified Micro-Organisms

The UN Recommendations and the ICAO Technical Instructions treat any genetically modified micro-organism that meets the definition of a Division 6.2 material as an infectious substance. In addition, these international standards class a genetically modified micro-organism that does not meet the definition of a Division 6.2 material, but is capable of altering plants, animals, or microbiological substances in a way not normally the result of natural reproduction, as a Class 9 material. The UN Recommendations also contain a provision that excludes from regulation genetically modified micro-organisms that are authorized and licensed for use by the government of origin, transit, and destination.

In the ANPRM, we invited comment on whether the HMR should incorporate the international transportation standards for genetically modified micro-organisms. Commenters who addressed this issue are concerned that the proposed regulations could interfere with food and animal production. We appreciate their concerns, but we believe that the potential for environmental and property damage as a result of the release of genetically modified micro-organisms in transportation justifies their regulation as Class 9 materials.

Accordingly, in this NPRM, we propose to add ''Genetically modified micro-organism'' to the Hazardous Materials Table as a Class 9 material. Under this proposal, these materials must be packaged in conformance with the requirements for packaging infectious substances, except that the packagings need not be marked or tested in accordance with Part 178 requirements.

The NPRM proposes two exceptions applicable to the transportation of genetically modified micro-organisms. First, we propose to except genetically modified micro-organisms from all requirements in the HMR if a federal government agency authorizes their final distribution and use. Second, we propose to except genetically modified micro-organisms from HMR requirements when transported in a non-passenger-carrying transport vehicle operated by a private or contract motor carrier. The materials must be packaged to conform to the provisions described above, and the package must be marked with the proper shipping name ''Genetically modified micro-organism.'' Further, our proposal requires couriers to be informed about the materials they are transporting.

G. Regulated Medical Waste

Commenters generally support the proposals outlined in the ANPRM to permit transportation of RMW in non-specification bulk packagings. Currently, bulk packagings for the transportation of RMW are only authorized under the terms of 29 exemptions. For the most part, these

packagings have demonstrated that they provide an acceptable level of safety in transportation.

To ensure consistency with international regulations and to provide the broadest selection of authorized bulk packagings, we are also proposing to allow the use of ''Large Packagings,'' which are intermediate bulk packagings containing one or more inner packagings consistent with the requirements of the UN Recommendations. A definition for these packagings was proposed in an NPRM issued under Docket HM–215D, published October 23, 2000 (65 FR 63294) and in the International Maritime Dangerous Goods Code and ICAO's Technical Instructions. As proposed under HM–215D, a Large Packaging consists of an outer packaging containing articles or inner packagings and designed for mechanical handling. A Large Packaging has a capacity greater than 400 kg (882 lbs.) or 450 liters (119 gallons), but does not exceed 3 cubic meters in volume.

Accordingly, in this NPRM we propose to authorize Large Packagings and certain non-specification bulk containers for use as outer packagings for the transportation of RMW. Plastic film bags meeting performance and test requirements for impact and tear resistance are authorized as inner packagings for solid RMW. Inner packagings for liquid RMW must be rigid, leak resistant, puncture resistant, break resistant, impervious to moisture, and sealed to prevent leakage.

In addition to the above, we propose to revise the quantity limitations applicable to shipments of RMW on aircraft. Currently, such shipments are forbidden. We propose to revise the quantity limitations for non-bulk shipments of RMW on board aircraft to read ''No limit'' for consistency with the ICAO Technical Instructions applicable to quantity limitations for RMW on airplanes. We propose to continue to prohibit bulk shipments of RMW on board aircraft.

H. Used Health Care Products

One commenter suggests that the HMR include an exception for used health care products. The commenter states that used health care products potentially contaminated with infectious substances, such as wound care and sanitary products, surgical equipment, diagnostic and blood testing products, and contraceptives used by consumers, medical professionals, and pharmaceutical providers are routinely returned to manufacturers. Used health care products may be returned for assessment of clinical trials, new product development, customer complaints, product investigations for government compliance, service and repair, and competitor trade-ins.

The infectious status of many of these returned used health care products may not be known. An individual consumer may be unaware that he has an infectious disease or may be reluctant to reveal this information, or a patient may be infectious, but not symptomatic. In addition, patient confidentiality requirements prohibit health care providers from communicating a patient's infectious status to others.

Further, in the case of potentially contaminated used health care products, it is the inanimate product that is being shipped, not the infectious agent. While used health care products may be contaminated with human blood or other body fluids or tissues, these substances usually are dried on the health care product. Special conditions necessary to promote or sustain biological integrity are not available prior to or during shipment. If infectious agents are present on used health care products, they are, in the words of the commenter, ''unwanted hitchhikers'' and are subject to hostile conditions that may inactivate pathogens over time or, at least, do not support their amplification.

The commenter suggests that neither the HMR nor international standards clearly address the shipment of potentially contaminated used health care products. We agree. Thus, in this NPRM we are proposing to except used health care products being returned to the manufacturer from the requirements of the HMR provided the products are shipped in a triple packaging that conforms to certain manufacturing and marking requirements. Under this proposal, the primary and secondary containers must be marked with the OSHA BIOHAZARD symbol and must be constructed of metal or plastic in a manner that assures that they remain intact during transportation. Under this NPRM, offerors and transporters of used health care products potentially contaminated with an infectious substance must be informed about the used health care product packaging requirements.

I. Hazard Communication

In the ANPRM, we stated that we are considering several options with respect to the marking or placarding of bulk packagings and transport vehicles containing infectious substances, including RMW. Some commenters support a requirement for Division 6.2 placards on each vehicle or bulk packaging that contains any quantity of a Risk Group 4 infectious substance because of the extreme risks to emergency responders and the general public associated with the possible release of such material. These commenters also generally support a requirement for placards on all bulk shipments of infectious substances. Commenters who oppose placarding for shipments of infectious substances suggest that such a requirement is unnecessary, noting that there are significant differences in the potential harm that could result from a transportation incident involving infectious substances as compared to one involving flammable, toxic, or explosive materials.

We agree with commenters that communication of a Risk Group 4 hazard to transportation workers and emergency response personnel is important. However, we are concerned that placarding transport vehicles containing Risk Group 4 infectious substances could compromise the security of the shipments. Further, shipments of Risk Group 4 infectious substances are strictly controlled by CDC regulation. Thus, we are not proposing a placarding requirement in this NPRM.

However, we believe bulk packagings and transport vehicles containing RMW should be marked to communicate to emergency response personnel the nature of the material being transported. We are aware that a number of states and local governments have promulgated marking regulations applicable to the transportation of RMW. Many of these state and local regulations include a requirement for vehicles containing shipments of RMW to be identified with a marking similar to the BIOHAZARD symbol prescribed by OSHA regulations for containers of potentially infectious material. State, local, and tribal governments should be aware that the preemption provisions of Federal hazardous materials transportation law (federal hazmat law; 49 U.S.C. 5101 *et seq.*) generally preclude non-federal governments from imposing requirements applicable to hazardous materials transportation if such requirements are not consistent with the HMR. 49 U.S.C. 5125. Thus, in the absence of a waiver of preemption by the Secretary, where state or local requirements conflict with or are inconsistent with the HMR requirements, the HMR control.

Federal hazmat law codifies the ''dual compliance'' and ''obstacle'' criteria for preemption of non-federal regulations. As set forth in 49 U.S.C. 5125(a), these criteria provide that, in the absence of a waiver of preemption by the Secretary

under 49 U.S.C. 5125(e) or unless it is authorized by another federal law, a requirement of a state, political subdivision of a state, or Indian tribe is explicitly preempted if:

(1) complying with a requirement of the state, political subdivision or Indian tribe and a requirement of Federal hazardous materials transportation law or a regulation issued under the law is not possible; or

(2) the requirement of the state, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out Federal hazardous materials transportation law or a regulation prescribed under the law.

Federal hazmat law also includes additional preemption provisions on certain ''covered subject'' areas. The covered subject areas are:

(a) The designation, description, and classification of hazardous material.

(b) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(c) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(d) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(e) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container represented, marked, certified, or sold as qualified for use in transporting hazardous material. 49 U.S.C. 5125(b).

Marking is a covered subject for purposes of preemption. Thus, unless authorized by another federal law or a waiver of preemption from the Secretary of Transportation, a non-federal marking requirement is preempted when it is not ''substantively the same'' as federal hazmat law or a regulation issued under it. 49 U.S.C. 5125(b)(1).

In the interest of uniformity, we believe it is essential that state, local, and tribal marking requirements be consistent from jurisdiction to jurisdiction. Thus, in this NPRM, we propose to require bulk packagings containing RMW to be marked with the appropriate UN identification number. We are also proposing to require bulk packagings of RMW to be identified with a BIOHAZARD marking that conforms to OSHA specifications for the BIOHAZARD marking in 29 CFR 1910.1030(g)(1)(i).

In this NPRM, we are also proposing to revise the INFECTIOUS SUBSTANCE label to reflect the new toll-free number to report infectious substances incidents to the CDC. That toll-free number is 1–800–232–0124.

J. Petitions for Rulemaking

The ANPRM requested comments on a petition for rulemaking (P–1350) submitted by the Medical Waste Institute (MWI) requesting relief for transportation of waste cultures and stocks that meet the definition for Division 6.2 materials. Specifically, MWI requests that we revise the HMR to allow contract and private motor carriers to transport discarded cultures and stocks of infectious substances in non-specification packagings if the carriers use dedicated vehicles. Currently, under § 173.134(b)(3), the HMR allow this type of transportation for RMW that does not contain a culture or stock of an infectious substance.

In support of its petition, MWI states that the current packagings required in the HMR for discarded cultures and stocks are not justified because they are expensive and lack a safety record that proves their actual public health and safety benefits. With its petition, MWI includes HMIS and state incident data on infectious substances for the period 1989 through March 1997.

Experience under exemption DOT–E 11588 has demonstrated that Packing Group II packagings transported by a private or contract carrier in dedicated vehicles provide an acceptable level of protection for waste cultures and stocks of infectious substances. Private and contract carriers that transport these materials have an increased level of knowledge about these materials. Moreover, the use of dedicated vehicles limits public exposure and assures that packages are handled by experienced personnel. We also have found that the general packaging requirements in §§ 173.24 and 173.24a, coupled with OSHA's packaging requirements in 29 CFR 1910.1030 for bloodborne pathogens, are adequate for less virulent types of infectious substances. Therefore, in this NPRM, we are proposing to revise § 173.134(b) to permit transportation of waste cultures and stocks of Risk Group 2 or 3 infectious substances in non-specification packagings when transported by private or contract carriers in dedicated vehicles.

IV. Section-by-Section Review

Part 171

Section 171.7

We propose to revise the table of material incorporated by reference to add two new references to test methods developed by the American Society for Testing and Materials. These tests would be required for plastic inner packagings used to transport RMW inside Large Packagings and non-specification bulk packagings.

Section 171.8

We propose to add definitions for ''biological product,'' ''cultures and stocks,'' ''diagnostic specimen,'' ''genetically modified micro-organism,'' ''risk group,'' ''sharps,'' and ''toxin.'' These definitions would refer readers to the definitions in Part 173 of the HMR.

Section 171.14

We propose to allow a two-year transition period for Division 6.2 labels revised as proposed in this NPRM.

Section 171.15

We propose to remove the term ''etiologic agents'' from paragraphs (a)(3) and (b) and replace it with ''infectious substances.'' In addition, in paragraph (b) we propose to add wording to emphasize that a written report of an incident involving infectious substances must be submitted to RSPA.

Part 172

Section 172.101

For the entry ''Regulated medical waste,'' we propose to remove the letter ''D'' in column (1). In column (7), we propose to remove the reference to Special Provision A14 and to revise columns (9A) and (9B) to replace ''Forbidden'' with ''No Limit'' for quantity limitations on board aircraft. These proposed changes harmonize requirements in the HMR with those in the ICAO Technical Instructions and facilitate the transportation of RMW in non-bulk packagings by aircraft. In addition, column 8C is revised to replace ''none'' with 197, to indicate that bulk packagings authorized for the transportation of RMW can be found in § 173.197 of the HMR. Finally, we propose to revise Special Provision A13 to prohibit the transportation of bulk packagings of RMW by aircraft.

For the entries ''Infectious substances, affecting animals only'' and ''Infectious substances, affecting humans,'' we propose to add new special provisions in column (7). Special Provision A81 provides relief from quantity limits for the transport of blood or blood products that contain infectious substances when in primary receptacles not exceeding 500 ml (17 ounces) and in outer packagings not exceeding 4L (1 gallon) and packaged in accordance with § 173.196. Special Provision A82 provides relief from UN standard packaging for transporting body parts, whole organs, and whole bodies.

We propose to add a new entry, ''Genetically modified micro-organism,'' to the Table as a Class 9 material consistent with entries in the UN Recommendations, ICAO Technical Instructions, and International Maritime Dangerous Goods Code.

In addition, we propose to add a new entry, ''Diagnostic specimen'', to the Table as a Division 6.2 material. There is no UN number, hazard warning label, or packing group assignment.

We also propose to add two new entries for ''Toxins, liquid, extracted from living sources, n.o.s., UN 3172'' and ''Toxins, solid, extracted from living sources, n.o.s., UN 3172.'' For both entries, a ''G'' in column (1) indicates that the shipping description on shipping papers must include the technical names for the materials. Both entries indicate that the materials are Division 6.1 materials, UN 3172, PG I, II, or III. We propose to add Special Provision 141 to state that toxins that contain infectious substances or are contained in infectious substances must be classed as Division 6.2 materials and assigned to UN 2814 or UN 2900, as appropriate.

Section 172.102

We propose to revise this section by removing Special Provision A14, revising Special Provision A13, and adding Special Provisions 141, A81, and A82, as detailed above.

Section 172.323

We propose to add this section to require bulk packagings containing RMW to be marked with a BIOHAZARD marking conforming to OSHA regulations at 29 CFR 1910.1030.

Section 172.432

We propose to revise the INFECTIOUS SUBSTANCE label to incorporate the new toll-free telephone number (1–800–232–0124) for reporting incidents to the CDC.

Part 173

Section 173.6

We propose to add a materials of trade exception for diagnostic specimens, biological products, and RMW, other than Risk Group 4 materials. The proposed exception includes packaging requirements and quantity limitations.

Section 173.28

We propose to require Division 6.2 packagings to be decontaminated prior to reuse.

Section 173.134

In paragraph (a), we propose to revise the definitions and classification criteria for ''infectious substance,'' ''biological product,'' ''diagnostic specimen,'' and ''regulated medical waste'' and to add definitions for ''cultures and stocks,'' ''risk group,'' ''sharps,'' and ''toxin.''

We propose to revise the definition of ''infectious substance'' for consistency with international standards and to require materials meeting the definition of an infectious substance to be assigned to risk groups based on the degree to which they cause injury through disease. Infectious substances assigned to Risk Group 1 are not subject to regulation under the HMR.

We propose to revise the definition of ''biological product'' to require biological products known to contain or suspected to contain a pathogen in Risk Groups 2, 3, or 4 to be classed as Division 6.2 materials, unless otherwise excepted.

We propose to define ''cultures and stocks'' to mean a material that is prepared and maintained for growth and storage and that contains a Risk Group 2, 3, or 4 infectious substance.

We propose to revise the definition of ''diagnostic specimen'' to require a diagnostic specimen known to contain or suspected to contain a Risk Group 4 pathogen to be classed as a Division 6.2 material. This determination is based on the known medical history and condition of the patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgement concerning the individual circumstances of the patient or animal.

We propose to revise the definition for ''regulated medical waste'' to indicate that regulated medical waste is a waste or reusable material that contains or is suspected to contain a Risk Group 2 or 3 infectious substance. As proposed in this NPRM, regulated medical waste containing a Risk Group 4 infectious substance must be classed and transported as a Division 6.2 material, UN 2900 or UN 2814.

We propose to define ''risk group'' to mean a ranking of a micro-organism's ability to cause injury through disease. Risk group assignment criteria include the pathogenicity of the organism, the mode and relative ease of transmission, the degree of risk to both an individual and a community, and the reversibility of the disease through the availability of effective preventive agents and treatments.

We propose to define ''sharps'' to mean any object that may be contaminated with an infectious substance that is also able to cut or penetrate the skin or packaging material. The term includes needles, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental wires.

We propose to define ''toxin'' to mean a Division 6.1 material secreted from a plant, animal, or bacterial source. The proposed definition notes that toxins that contain an infectious substance or are contained in an infectious substance must be classed as Division 6.2 materials.

In paragraph (b), we propose to list exceptions from the HMR requirements applicable to Division 6.2 materials. Proposed exceptions include:

1. Biological products licensed/approved for public dissemination by FDA or USDA;
2. Blood collected for transfusions or the preparation of blood products, and blood products, tissues, and organs intended for transplant;
3. Diagnostic specimens or biological products transported by private or contract motor carriers in dedicated motor vehicles;
4. Material treated so that it no longer contains an infectious substance;
5. Sanitary waste and sewage;
6. Sewage sludge and compost;
7. Animal waste generated in animal husbandry or food production;
8. Corpses and anatomical parts intended for interment, cremation, or research; and
9. Forensic material transported on behalf of the federal government or a state, local government, or tribal government agency.

We also propose to modify the exception for medical waste generated from households to indicate that such medical waste must be transported in accordance with applicable state, local, or tribal government requirements.

In addition, we propose to revise the exception for laundry or medical equipment conforming to OSHA regulations in 29 CFR 1910.1030 to clarify that this exception applies to medical equipment intended for reuse and equipment used for testing. The revised definition further clarifies that the exception does not apply to medical equipment transported for disposal.

In paragraph (c), we propose to modify the exception for RMW transported by contract or private carriers to include waste cultures and stocks that contain Risk Group 2 or 3 infectious substances.

Finally, we propose to add paragraph (d) to clarify that if an item listed in paragraphs (b) or (c) of this section meets the definition of another hazard class or if it is a hazardous substance, hazardous waste, or marine pollutant, it must be offered for transportation and

transported in accordance with applicable requirements of the HMR.

Section 173.140

We propose to add new paragraphs (c) and (d) to provide defining criteria and exceptions for genetically modified micro-organisms that do not meet the definition of a Division 6.2 material, but that have the potential to alter animals, plants, or the environment. These materials are assigned to the Class 9 hazard class. Genetically modified micro-organisms that meet the criteria for a Division 6.2 material must be classed as infectious substances. We propose to except genetically modified micro-organisms from HMR requirements if a federal government agency authorizes their final distribution and use. We also propose to except genetically modified micro-organisms from HMR requirements when transported in a non-passenger-carrying transport vehicle operated by a private or contract motor carrier.

Section 173.196

We propose to revise this section for clarity and consistency with the UN Recommendations and ICAO Technical Instructions. These revisions include packaging and overpack marking requirements to ensure the integrity of the packagings during air transport, including circumstances where the refrigerant is dissipated or lost. A new paragraph (d) is added to prescribe non-specification packaging provisions for body parts.

Section 173.197

We propose to revise this section to authorize certain bulk packagings for the transportation of RMW. Paragraph (a) proposes general requirements for both non-bulk and bulk packagings. Proposed paragraph (b) requires non-bulk packagings to conform to the requirements of part 178 at the Packing Group II performance level. Proposed paragraphs (c) and (d) authorize Large Packagings and non-specification bulk containers for the transportation of RMW. These proposed packaging provisions are based on the terms of 29 current exemptions and our own initiative. Proposed paragraph (c) sets forth conditions governing the use of Large Packagings. Proposed paragraph (d) sets forth the conditions governing the use of non-specification wheeled carts and bulk outer packagings. Proposed paragraph (e) specifies the inner packagings authorized for use with bulk outer packagings.

Section 173.199

We propose to add a new § 173.199 to address packaging requirements for diagnostic specimens and used health care products. Diagnostic specimens meeting the definition of a Risk Group 4 material must be classed and transported as infectious substances, UN 2814 or UN 2900. Generally, we propose to permit all other diagnostic specimens to be shipped in triple packagings that are capable of passing a 1.2 meter (3.9 feet) drop test.

We propose to require liquid diagnostic specimens to be packaged in leakproof primary receptacles with a volumetric capacity of not more than 500 ml (17 ounces). For shipments by aircraft, the primary receptacle or secondary packaging must be able to withstand without leakage an internal pressure producing a pressure differential of not less than 95 kPa (0.95 bar, 14 psi). The secondary packaging must be leakproof and impervious to moisture. The volumetric capacity of the outer packaging may not exceed 4 L (1 gallon).

We propose to require solid diagnostic specimens to be packaged in a siftproof primary receptacle with a capacity of not more than 500 g (1.1 pounds). The secondary packaging must be leakproof. The capacity of the outer packaging may not exceed 4 kg (8.8 pounds).

We propose to permit shipment of used health care products being returned to the manufacturer in triple packagings, in which the primary and secondary containers must be constructed of plastic or metal and must be marked with the OSHA BIOHAZARD symbol. A used health care product that can cut or penetrate skin or packaging material must be transported in a puncture-resistant primary container.

Under this proposal, diagnostic specimens and used health care products shipped in accordance with these provisions are not subject to any other requirements in the HMR, except for minimal training requirements and, for diagnostic specimens, incident reporting for shipments offered for transportation or transported by aircraft.

Section 173.200

We propose to add a new § 173.200 to address packaging requirements for genetically modified micro-organisms. We propose to require genetically modified micro-organisms to be packaged in conformance with § 173.196, except that the packagings need not be marked in accordance with § 178.503 nor tested in accordance with § 178.609. Alternatively, we propose to permit genetically modified micro-organisms to be transported in packagings that meet the specifications in §§ 173.203 or 173.213 at the Packing Group III performance level.

Part 177

Section 177.834

We propose to revise paragraphs (a) and (g) to indicate that packages containing Division 6.2 materials must be properly secured in a transport vehicle.

Section 177.843

We propose to add a new paragraph (d) to require a transport vehicle to be decontaminated prior to reuse if a Division 6.2 material is released from its packaging inside the vehicle.

Part 178

Section 178.503

We propose to add a new paragraph (f) to incorporate package markings for infectious substances packagings consistent with those in the ICAO Technical Instructions and the UN Recommendations.

Section 178.601

We propose to add a sentence to paragraph (c)(1) of this section to include the tests for infectious substance packaging in the definition of design qualification testing. As a result of this proposed change, manufacturers of infectious substances packagings are required to retain design qualification records in accordance with § 178.601(c)(l). In addition, we propose to add a sentence to paragraph (c)(2) to indicate that, for infectious substances packagings, periodic retesting is the performance of tests specified in § 178.609 at the frequency specified in § 178.601(e). Finally, we propose to add a sentence to paragraph (e) to require packagings used to transport infectious substances to pass periodic retests.

Section 178.609

We propose to revise the section heading to remove the wording ''(etiologic agents).'' We propose to revise paragraph (c) to permit the use of expanded plastics for inner packagings and require the packaging tests to be determined by the most fragile inner packaging. Paragraphs (d)(1)(i), (d)(1)(iii), and (d)(1)(iv) are revised for clarity. We propose to revise paragraph (e) to replace the current water immersion test with a water spray test that simulates exposure to rainfall consistent with the ICAO Technical Instructions. Paragraphs (h)(1) and (h)(2) are revised to clearly indicate that,

during the penetration test, penetration of the primary receptacle is not acceptable. Current paragraph (i) is deleted. We propose to add new paragraph (i) to incorporate the selective testing provisions in the UN Recommendations and ICAO Technical Instructions. These provisions allow variations in the primary receptacles within the secondary packaging without further testing of the completed packaging if an equivalent level of performance is maintained.

V. Regulations of Other Agencies

In addition to RSPA, several federal agencies have responsibility for regulating infectious substances and genetically modified micro-organisms.

A. Centers for Disease Control and Prevention

The Department of Health and Human Services is authorized to promulgate regulations to prevent the introduction, transmission, and spread of communicable diseases in the United States. CDC has been delegated authority to regulate the interstate shipment of infectious substances. The current CDC regulations are codified at 42 CFR Part 72. The regulations provide requirements for minimum packaging and labeling for diagnostic specimens and biological products, and include a list of select agents for which special labeling and tracking is required.

On October 28, 1999, CDC published an NPRM, proposing to clarify and expand existing requirements for proper packaging and handling of infectious substances (64 FR 58022). The NPRM includes proposals to ensure that all biological materials known or suspected to contain an infectious substance are packaged to minimize the potential for leakage during transit. The proposed regulations are intended to harmonize CDC regulations with those of other federal agencies and with international standards.

B. Occupational Safety and Health Administration

The Department of Labor's Occupational Safety and Health Administration (OSHA) is authorized to assure safe and healthy workplaces by the Occupational Safety and Health Act of 1970 (OSH Act). OSHA regulations governing occupational exposure to bloodborne pathogens in human blood and body fluids, unfixed tissues, organs, cell cultures, and other fluids from humans or animals are codified at 29 CFR Part 1910.1030. The regulations require persons who handle bloodborne pathogens to utilize Universal Precautions as a means of infection control. The Universal Precautions require human blood and body fluids to be treated as if known to be infectious. Among other requirements, the regulations require specimens of blood or other potentially infectious materials to be placed in containers that prevent leakage during collection, handling, processing, storage, or transport. The regulations also require containers of potentially infectious material to be labeled with a BIOHAZARD label.

C. Food and Drug Administration

The Food and Drug Administration (FDA) regulates, licenses, and approves biological and related products to ensure their purity, potency, safety, and efficacy. FDA regulates vaccines, blood derivatives, allergenic extracts, blood components, whole blood, tissues, monoclonal antibodies, biotech derived products, somatic cell and gene therapies, in vitro diagnostics, and medical devices. FDA's regulations are codified at 21 CFR Parts 1–1299.

D. U.S. Department of Agriculture

The U.S. Department of Agriculture's (USDA) Center for Veterinary Biologics assures that pure, safe, potent, and effective veterinary biological products are available for the diagnosis, prevention, and treatment of animal diseases. The program assures that biological products are free of disease-producing agents, develops appropriate standards and procedures for product release, issues licenses and permits, monitors and inspects products and facilities, and controls field tests and the release of veterinary biological products. USDA regulations for veterinary biological products are codified at 9 CFR parts 101–124.

Several USDA agencies regulate and monitor the use of biotechnology for agriculture. The Animal and Plant Health Inspection Service regulates the movement, importation, and field testing of Genetically Engineered Organisms (GEOs) through permitting and notification procedures. The Food Safety Inspection Service has responsibility for the safe use of engineered domestic livestock, poultry, and products derived from them. The Agricultural Research Service conducts in-house research on GEOs. The Cooperative State Research, Education, and Extension Service administers the biotechnology risk assessment program as well as research programs in gene mapping, sequencing and biotechnology applications. USDA regulations applicable to GEOs are at 7 CFR part 340.

E. Actions to Assure Regulatory Consistency

A number of commenters to the ANPRM urged us to work with other federal agencies to assure that regulations applicable to the transportation of infectious substances are compatible. We agree that persons who offer for transportation or transport infectious substances or genetically modified micro-organisms should not be forced to comply with several sets of inconsistent or conflicting regulations imposed by different federal regulatory agencies. We met with CDC to discuss its 1999 NPRM and potential areas of conflict with the HMR and international standards. In addition, we provided CDC, USDA, FDA, and OSHA with copies of our NPRM in advance of publication in the **Federal Register** for their information and comment, and asked specifically for potential areas of conflict between their regulations and the proposals in this NPRM. None of these agencies identified any potentially conflicting regulatory requirements in their informal responses to our request. We encourage commenters to address this issue as well.

VI. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not a significant regulatory action under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A preliminary regulatory evaluation that considers various regulatory alternatives is available for review in the public docket.

The costs of these proposed regulations identified in the regulatory evaluation are attributed to the regulation of shipments of diagnostic specimens that include a Risk Group 2, 3 or 4 pathogen. Our tentative estimate of costs is slightly more than $2 million per year.

Because of a lack of reliable information concerning deaths, injuries, property damage, and other costs attributable to incidents involving the release of an infectious substance, we are unable to quantify potential savings that may result from these proposed rules, if adopted as final. Affected parties and other concerned persons are requested to provide comments on costs and/or potential benefits.

Benefits resulting from implementation of the NPRM proposals include the following:

1. *International harmonization:* Harmonization of requirements in the HMR with standards specified in the UN Recommendations, ICAO Technical Instructions, IMDG Code, and TDG will remove current inconsistencies among the regulations, thereby facilitating efficient transportation of infectious substances across national borders. More importantly, harmonized regulations reduce the potential for misunderstanding and confusion and, thus, enhance safety.

2. *Conversion of exemptions to regulations of general applicability:* Conversion of 29 exemptions applicable to the bulk transportation of RMW to regulations of general applicability will result in a slight cost savings to the 29 exemptions holders and 65 parties-to-the-exemption holders. In addition, the industry will be able to take advantage of the added flexibility provided by the increased number of packaging options for transporting RMW.

3. *Modification of current exceptions for diagnostic specimens and biological products:* We believe that potentially infectious diagnostic specimens and biological products should not be transported without regard to packaging and with no communication of hazard to those who may come into contact with them. The HMIS data base and anecdotal information indicate that packages of these currently excepted materials are sometimes damaged during transportation, resulting in delays and possible risk to cargo handlers, flight crews, emergency responders, and the general public. The proposed requirements in the NPRM for more stringent packaging for these materials combined with the proposed exceptions for transportation of these materials as materials of trade or by private or contract carriers in dedicated vehicles will assure swift and efficient transportation while reducing the risks to transportation workers and the general public. Enhancements to packaging would also reduce the risk of exposure for laboratory workers opening and handling packages at the point of receipt. The minimal level of regulation proposed for these materials would enhance overall safety while imposing insignificant costs on the regulated industry.

4. *New requirements for genetically modified micro-organisms:* We believe that genetically modified micro-organisms that have not been approved for distribution should not be transported without regard to packaging and communication of hazard. Thus, we are proposing new packaging and hazard communication requirements for these currently unregulated materials. The proposal to incorporate into the HMR international standards applicable to genetically modified micro-organisms will enhance transportation safety and reduce potential adverse environmental impacts while imposing minimal requirements on the regulated industry.

Although we cannot assign definitive dollar amounts to these potential benefits, we believe that, taken together, the proposals are the least costly alternatives available for ensuring an acceptable level of transportation safety and that the potential benefits to society more than offset the potential costs associated with this proposed rule.

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt state, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule addresses covered subject items 1–5 above and would preempt state, local, and Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary to assure an acceptable level of safety for the transportation of infectious substances and facilitate international transportation of these materials.

Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of federal preemption be one year from publication of a final rule in the **Federal Register**.

C. Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on the assessment in the preliminary regulatory evaluation, I hereby certify that while the proposed rule would apply to a substantial number of small entities, there would not be a significant economic impact on those small businesses. This certification is based upon a consideration that the identified costs are randomly distributed to the more than 441,000 establishments (offices and clinics of doctors of medicine, dentists, doctors of osteopathy, chiropractors, optometrists, podiatrists, and health practitioners; nursing and personal care facilities; hospitals; and medical and dental laboratories) that comprise Standard Industrial Classification (SIC) Major Group 80 (Health Services). The slightly more than $2 million in annual costs attributed to this proposed rule is a mere fraction of the $300 billion in receipts reported by the health services industry. We believe none of those costs will be disproportionately borne by any of the identified groups of small businesses. If your business or organization is a small entity and if adoption of some or all of the proposed

provisions could have a significant economic impact on your operations, please submit a comment to explain how and to what extent your business or organization could be affected.

E. Paperwork Reduction Act

RSPA has current information collection approvals under OMB No. 2137–0039, Hazardous Materials Incident Reports, which expires March 31, 2002, with 33,811 burden hours and $811,221.66 annual costs; and OMB No. 2137–0557, Approvals for Hazardous Materials, which expires August 31, 2003, with 180,302 burden hours and $413,737.40 annual costs. We believe that this proposed rule may result in an increase in annual burden hours and costs. If these proposals are finalized, the current approvals would be required to be revised and resubmitted to OMB for extension and re-approval.

Section 1320.8(d), Title 5, Code of Federal Regulations requires RSPA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that we may submit to OMB for extension and re-approval based on the requirements in this proposed rule. We have revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in this proposed rule since the information collection was last approved. We estimate that the total information collection and recordkeeping burden as proposed in this rule would be revised as follows:

OMB No.: 2137–0039.
Total Annual Responses: 22,900.
Total Annual Burden Hours: 34,441.
Total Annual Burden Cost: $825,621.66.

OMB No.: 2137–0557.
Number of Respondents: 3,523.
Total Annual Responses: 3,875.
Total Annual Burden Hours: 18,405.
Total Annual Burden Cost: $415,237.40.

We specifically request comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. Comments should be received prior to the close of the comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule, RSPA will submit the revised information collection and recordkeeping requirements to the Office of Management and Budget for approval.

F. Regulation Identifier Number (RIN)

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

G. Unfunded Mandates Reform Act

This NPRM imposes no mandates and thus does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995.

H. Environmental Assessment

We find that there are no significant environmental impacts associated with this proposed rule. An environmental assessment has been placed in the public docket for this rulemaking.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR parts 171, 172, 173, 177, and 178 as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.

2. In § 171.7, in the table in paragraph (a)(3), two new entries would be added in alphanumeric sequence under the American Society for Testing and Materials, to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Testing and Materials	
* * * * * * *	
ASTM D 1709–97 Standard Test Methods for Impact Resistance of Plastic Film by the Free-Falling Dart Method, 1997 Edition	173.197
* * * * * * *	
ASTM D 1922–94A Standard Test Method for Propagation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum Method, 1994 edition	173.197
* * * * * * *	

* * * * *

3. Section 171.8 would be amended by adding the following definitions in alphabetical order to read as follows:

§ 171.8 Definition and abbreviations.

* * * * *

Biological product. See § 173.134 of this subchapter.

* * * * *

Cultures and stocks. See § 173.134 of this subchapter.

* * * * *

Diagnostic specimen. See § 173.134 of this subchapter.

* * * * *

Genetically modified micro-organism. See § 173.140 of this subchapter.

* * * * *

Risk group. See § 173.134 of this subchapter.

* * * * *

Sharps. See § 173.134 of this subchapter.

* * * * *

Toxin. See § 173.134 of this subchapter.

* * * * *

4. Section 171.14 would be amended by adding paragraph (f) to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(f) Division 6.2 labels that conform to specifications in § 172.432 of this subchapter in effect on October 1, 2000, may be used until [two years from the effective date of final rule].

§ 171.15 [Amended]

5. In § 171.15, the following changes would be made:

a. Paragraph (a)(3) would be amended by removing the term ''(etiologic agents)''.

b. Paragraph (b) introductory text would be amended by removing the term ''etiologic agents'' and in its place adding the term ''infectious substances''.

c. Paragraph (b) introductory text would be amended by adding the wording ''; however, a written report is still required as stated in paragraph (c) of this section'' immediately after the number ''202–267–2675''.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

6. The authority citation for part 172 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

7. In § 172.101, the following proper shipping names would be added, in alphabetical order, or revised in the Hazardous Materials Table to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/ rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[ADD]												
	Diagnostic specimen.	6.2				A82	134	199	None	4L or 4kg	4L or 4kg	A	40
	* *			*		*		*		*			*
	Genetically modified micro-organisms.	9	UN3245		9		140	200	None	No Limit	No Limit	A	40
	* *			*		*		*		*			*
G	Toxins, liquid, extracted from living sources n.o.s.	6.1	UN3172	I	6.1	141		201	243	1 L	30 L	B	40
				II				202	243	5 L	60 L	B	40
				III			153	203	241	60 L	220 L	A	40
G	Toxins, solid, extracted from living sources n.o.s.	6.1	UN3172	I	6.1	141		211	243	5 kg	50 kg	B	
				II				212	243	25 kg	100kg	B	
				III			153	213	241	100 kg	200kg	A	
	* *			*		*		*		*			*
	[REVISE]												
G	Infectious substances, affecting animals *only*.	6.2	UN2900		6.2	A81, A82	134	196	None	50 ml or 50 g	4L or 4kg	B	40
G	Infectious substances, affecting humans.	6.2	UN2814		6.2	A81, A82	134	196	None	50 ml or 50 g	4L or 4kg	B	40
	* *			*		*		*		*			*
	Regulated medical waste.	6.2	UN3291	II	6.2	A13	134, 197	197	197	No Limit	No Limit	A	40
	* *			*		*		*		*			*

* * * * *

8. In § 172.102, in paragraph (c)(1), Special provision 141 would be added, and in paragraph (c)(2), Special Provision A13 would be revised, Special provision A14 would be removed, and Special Provisions A81 and A82 would be added in alphanumeric order to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

141 A toxin from a plant, animal or bacterial source that contains an infectious substance, or a toxin that is contained in an infectious substance, must be classed as Division 6.2 and assigned to UN 2814 or UN 2900, as appropriate.

(2) * * *

Code/Special Provisions

* * * * *

A13 Bulk packagings are not authorized for transportation by aircraft.

* * * * *

A81 The quantity limits in columns (9A) and (9B) do not apply to blood or blood products known to contain or suspected of containing an infectious substance when transported in primary receptacles not exceeding 500 ml (17 ounces) and in outer packagings not exceeding 4 L (1 gallon) and packaged in accordance with § 173.196 of this subchapter. A82 The quantity limits in columns (9A) and (9B) do not apply to human or animal body parts, whole organs or whole bodies known to contain or suspected of containing an infectious substance.

* * * * *

9. A new § 172.323 would be added to read as follows:

§ 172.323 Infectious substances.

(a) In addition to any identification number required by this subpart, a bulk packaging containing a regulated medical waste, as defined in § 173.134(a)(5) of this subchapter, must be marked with a BIOHAZARD marking that conforms to 29 CFR 1910.1030(g)(1)(i)—

(1) On two opposing sides or two ends other than the bottom if the packaging has a capacity of less than 3,785 L (1,000 gallons). The BIOHAZARD marking must measure at least 273 mm (10.8 inches) on each side and must be visible from the direction it faces.

(2) On each end and each side if the packaging has a capacity of 3,785 L (1,000 gallons) or more. The BIOHAZARD marking must measure at least 273 mm (10.8 inches) on each side and must be visible from the direction it faces.

(b) For a bulk packaging contained in or on a transport vehicle or freight container, if the BIOHAZARD marking on the bulk packaging is not visible, the transport vehicle or freight container must be marked as required by paragraph (a) of this section on each side and each end.

10. In § 172.432, the illustration in paragraph (a) would be revised to read as follows:

§ 172.432 INFECTIOUS SUBSTANCE label.

(a) * * *

* * * * *

BILLING CODE 4910–60–P

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

11. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

12. In § 173.6, paragraph (a)(1) introductory text would be revised, paragraph (a)(4) would be redesignated as paragraph (a)(5), and a new paragraph (a)(4) would be added to read as follows:

§ 173.6 Materials of trade exceptions.

* * * * *

(a) * * *

(1) A Class 3, 8, 9, Division 4.1, 5.1, 5.2, 6.1, 6.2, or ORM–D material contained in a packaging having a gross mass or capacity not over—

* * * * *

(4)(i) A Division 6.2 material, other than a Risk Group 4 material, that is a diagnostic specimen, biological product or regulated medical waste. The material must be contained in a combination packaging consisting of—

(A) One or more inner packagings where the gross mass or capacity of each inner packaging does not exceed 0.5 kg (1.1 pound), or 0.5 L (17 ounces), and an outer packaging having a gross mass or capacity not exceeding 4 kg (8.8 pounds) or 4 L (1 gallon); or

(B) A single inner packaging with a gross mass or capacity not exceeding 16 kg (35.2 pounds) or 16 L (4.2 gallons) in a single outer packaging.

(ii) Regulated medical waste may be packaged in a combination packaging consisting of inner packagings having a gross mass or capacity not exceeding 4 kg (8.8 pounds) or 4 L (1 gallon), and an outer packaging having a gross mass or capacity not exceeding 16 kg (35.2 pounds) or 16 L (4.2 gallons). Packagings intended to contain sharps must be resistant to puncture and leak resistant.

* * * * *

13. Section 173.28 would be amended by adding paragraph (f) to read as follows:

§ 173.28 Reuse, reconditioning and remanufacture of packagings.

* * * * *

(f) A Division 6.2 packaging that is to be reused must be decontaminated prior to reuse by any means that is effective for neutralizing the infectious substance the packaging previously contained. A secondary packaging or outer packaging that conforms to the requirements of § 173.196 or § 173.199 need not be decontaminated prior to reuse if no leakage from the primary receptacle has occurred.

14. Section 173.134 would be revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

(a) *Definitions and classification criteria.* For the purpose of this subchapter, the following definitions and classification criteria apply:

(1) *Division 6.2 (infectious substance)* means a material known to contain or suspected of containing a pathogen that has the potential to cause disease when exposure to it occurs. Pathogens are micro-organisms (including bacteria, viruses, rickettsia, parasites, and fungi) or recombinant micro-organisms (hybrid or mutant) that cause infectious disease in humans or animals. A Division 6.2 material must be assigned to a risk group in accordance with this paragraph (a). Assignment to UN 2814 or UN 2900 is based on known medical condition and history of the source patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgement concerning individual circumstances of the source patient or animal.

(2) *Biological product* means:

(i) A Division 6.2 material that is derived from a living organism that includes, but is not limited to, materials manufactured and distributed in accordance with one of the following provisions:

(A) 9 CFR part 102 (Licenses for Biological Products);

(B) 9 CFR part 103 (Experimental Products, Distribution, and Evaluation of Biological Products Prior to Licensing);

(C) 9 CFR part 104 (Permits for Biological Products);

(D) 21 CFR part 312 (Investigational New Drug Application); or

(E) 21 CFR parts 600 to 680 (Biologics).

(ii) A *biological product* is used for prevention, treatment, or diagnosis of disease in humans or animals, or for developmental, experimental, or investigational purposes related to these uses. This term includes a finished product such as a vaccine or an unfinished product intended for further processing into a finished product; however, it does not include a diagnostic specimen. Biological products known to contain or suspected of containing a pathogen in Risk Group 2, 3, or 4 must be classed as Division 6.2 and described under UN 2814 or UN 2900, as appropriate, unless otherwise excepted.

(3) *Cultures and stocks* means a material that is prepared and maintained for growth and storage and that contains a Risk Group 2, 3 or 4 infectious substance.

(4) *Diagnostic specimen* means any human or animal material, including excreta, secreta, blood and its components, tissue, and tissue fluids being transported for diagnostic or investigational purposes, but excluding live infected humans or animals. A *diagnostic specimen* is not assigned a UN identification number unless the source patient or animal has or may have a serious human or animal disease from a Risk Group 4 micro-organism, in which case it must be assigned to UN 2814 or UN 2900, as appropriate. Assignment to UN 2814 or UN 2900 is based on known medical condition and history of the patient or animal, endemic local conditions, symptoms of the source patient or animal, or professional judgement concerning individual circumstances of the source patient or animal.

(5) *Regulated medical waste* means a waste or reusable material that contains or is suspected of containing an infectious substance in Risk Group 2 or 3 and is generated in the diagnosis, treatment, or immunization of human beings or animals; research on the diagnosis, treatment or immunization of human beings or animals; or the production or testing of biological products. *Regulated medical waste* containing an infectious substance in Risk Group 4 must be classed as Division 6.2 and described under UN 2814 or UN 2900, as appropriate.

(6) *Risk group* means a ranking of a micro-organism's ability to cause injury through disease. A *risk group* is defined by criteria developed by the World Health Organization (WHO) based on the pathogenicity of the organism, the mode and relative ease of transmission, the degree of risk to both an individual and a community, and the reversibility of the disease through the availability of known and effective preventative agents and treatment. There is no relationship between a *risk group* and a packing group. The criteria for each *risk group* according to the level of risk are as follows:

RISK GROUP TABLE

Risk group	Pathogen	Risk to individuals	Risk to the community
4	A pathogen that usually causes serious human or animal disease and that can be readily transmitted from one individual to another, directly or indirectly, and for which effective treatments and preventive measures are not usually available.	HIGH	HIGH
3	A pathogen that usually causes serious human or animal disease but does not ordinarily spread from one infected individual to another, and for which effective treatments and preventive measures are available.	HIGH	LOW
2	A pathogen that can cause human or animal disease but is unlikely to be a serious hazard, and, while capable of causing serious infection on exposure, for which there are effective treatments and preventive measures available and the risk of spread of infection is limited.	MODERATE	LOW
1	A micro-organism that is unlikely to cause human or animal disease. A material containing only such micro-organisms is not subject to the requirements of this subchapter.	NONE OR VERY LOW	NONE OR VERY LOW

(7) *Sharps* means any object that may be contaminated with a pathogen that is also capable of cutting or penetrating skin or a packaging material. The term includes needles, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental wires.

(8) *Toxin* means a Division 6.1 material secreted from a plant, animal, or bacterial source. A *toxin* that contains an infectious substance or a *toxin* that is contained in an infectious substance must be classed as Division 6.2 and described under UN 2814 or UN 2900, as appropriate.

(b) *Exceptions.* The following are not subject to the requirements of this subchapter as Division 6.2 materials:

(1) Biological products that are known to contain or suspected of containing a pathogen in Risk Group 1, or that do not contain a pathogen.

(2) Biological products that have successfully completed all applicable

federal approval or licensing requirements, such as those required by the Food and Drug Administration of the Department of Health and Human Services or the U.S. Department of Agriculture.

(3) Blood that has been collected for the purpose of blood transfusion or for the preparation of blood products, and blood products, tissues, or organs intended for use in transplant operations.

(4) A diagnostic specimen or biological product when transported by a private or contract carrier in a motor vehicle used exclusively to transport diagnostic specimens or biological products. Medical or clinical equipment and laboratory products may be transported aboard the same vehicle provided they are properly packaged and secured against exposure/contamination to the diagnostic specimen. If a diagnostic specimen or biological product meets the definition of regulated medical waste in paragraph (a)(5) of this section, it must be offered for transportation and transported in conformance with the appropriate requirements for regulated medical waste.

(5) Laundry or medical equipment that conforms to the regulations of the Occupational Safety and Health Administration of the Department of Labor in 29 CFR 1910.1030. This exception includes medical equipment that is intended for use, cleaning, or refurbishment, such as reusable surgical equipment, or equipment used for testing where the components within which the equipment is contained essentially function as packaging. This exception does not apply to medical equipment that is being transported for disposal.

(6) A material, including waste, that previously contained an infectious substance that has been treated by steam sterilization, chemical disinfection, or other appropriate method, so that it no longer meets the definition of an infectious substance.

(7) A living person.

(8) Any waste or recyclable material, other than regulated medical waste, including—

(i) Garbage and trash derived from hotels, motels, and households, including but not limited to single and multiple residences;

(ii) Sanitary waste or sewage;

(iii) Sewage sludge or compost;

(iv) Animal waste generated in animal husbandry or food production; or

(v) Medical waste generated from households and transported in accordance with applicable state, local, or tribal requirements.

(9) Corpses, remains, and anatomical parts that are intended for interment, cremation, or medical research at a college, hospital, or laboratory.

(10) Forensic material that is transported on behalf of a U.S. Government, state, local or Indian tribal government agency. The material must be shipped in a packaging conforming to the provisions of § 173.24.

(c) *Exceptions for regulated medical waste.* The following provisions apply to the transportation of regulated medical waste:

(1) A regulated medical waste that is transported by a private or contract carrier is excepted from—

(i) The requirement for an ''INFECTIOUS SUBSTANCE'' label if the outer packaging is marked with a ''BIOHAZARD'' marking in accordance with 29 CFR 1910.1030; and

(ii) For other than a waste culture or stock of an infectious substance, the specific packaging requirements of this section if packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030.

(2) A waste culture or stock of a Risk Group 2 or 3 infectious substance may be offered for transportation and transported as a regulated medical waste when it is packaged in a rigid non-bulk packaging conforming to the general packaging requirements of §§ 173.24 and 173.24a and packaging requirements specified in 29 CFR 1910.1030 and transported by a private or contract carrier using a vehicle dedicated to the transportation of regulated medical waste.

(d) If an item listed in paragraph (b) or (c) of this section meets the definition of another hazard class or if it is a hazardous substance, hazardous waste, or marine pollutant, it must be offered for transportation and transported in accordance with applicable requirements of this subchapter.

15. Section 173.140 would be amended by removing ''; or'' at the end of paragraph (a) and adding a period in its place and by adding paragraphs (c) and (d) to read as follows:

§ 173.140 Class 9-Definitions.

* * * * *

(c) *Genetically modified micro-organism.* A genetically modified micro-organism is a micro-organism that has been purposely altered through genetic engineering in a way that does not occur naturally.

(1) A Class 9 genetically modified micro-organism does not meet the definition of a Division 6.2 material, but has the potential to alter animals, plants or microbiological substances in a way not normally the result of natural reproduction.

(2) A genetically modified micro-organism that also meets the definition for a Division 6.2 material must be classed as a Division 6.2 material.

(3) A live animal that contains, or is contaminated with, a genetically modified micro-organism, including a genetically modified micro-organism that also meets the definition of a Division 6.2 material, must be transported under terms and conditions approved by the Associate Administrator for Hazardous Materials Safety.

(4) A genetically modified micro-organism known or suspected to be dangerous to the environment may not be transported by air unless approved by the Associate Administrator for Hazardous Materials Safety.

(d) *Exceptions for genetically modified micro-organisms.* (1) A genetically modified micro-organism that is authorized by a U.S. Government agency for final distribution and use is not subject to requirements of this subchapter.

(2) A genetically modified micro-organism is excepted from all other requirements of this subchapter when transported in a non-passenger carrying transport vehicle operated by a private or contract motor carrier. The material must be packaged in accordance with the provisions in § 173.203 or § 173.213 at the Packing Group III performance level, and marked with the proper shipping name ''Genetically modified micro-organism''. Each person who offers or transports a genetically modified micro-organism under the provisions of this paragraph (d) must be informed of the requirements of this paragraph (d).

16. Section 173.196 would be revised to read as follows:

§ 173.196 Infectious substances.

(a) *Division 6.2 packaging.* A Division 6.2 packaging must meet the test standards of § 178.609 of this subchapter and must be marked in conformance with § 178.503(f) of this subchapter. Division 6.2 packaging is a triple packaging that consists of the following components:

(1) A watertight primary receptacle.

(2) A watertight secondary packaging. If multiple primary receptacles are placed in a single secondary packaging, they must be wrapped individually to prevent contact between them.

(3) An outer packaging of adequate strength for its capacity, mass and intended use. The outer packaging must

measure at least 100 mm (3.9 inches) at its smallest overall external dimension.

(4) For a liquid infectious substance, an absorbent material placed between the primary receptacle and the secondary packaging. The absorbent material must be sufficient to absorb the entire contents of all primary receptacles.

(5) An itemized list of contents enclosed between the secondary packaging and the outer packaging.

(6) The primary receptacle or secondary packaging used for infectious substances must be capable of withstanding, without leakage, an internal pressure that produces a pressure differential of not less than 95 kPa (0.95 bar, 14 psi) and temperatures in the range of −40 °C to +55 °C (−40 °F to +131 °F).

(b) *Additional requirements for packaging infectious substances.* Infectious substances must be packaged according to the following requirements depending on the physical state and other characteristics of the material:

(1) *Infectious lyophilized substances.* Primary receptacles must be flame-sealed glass ampules or rubber-stopped glass vials fitted with metal seals.

(2) *Liquid or solid infectious substances*—(i) *Infectious substances shipped at ambient temperatures or higher.* Authorized primary receptacles are those of glass, metal, or plastic. Positive means of ensuring a leakproof seal, such as heat seal, skirted stopper, or metal crimp seal, must be provided. If screw caps are used, they must be secured by positive means, such as with adhesive tape.

(ii) *Infectious substances shipped refrigerated or frozen (ice, pre-frozen packs, dry ice).* Ice or dry ice must be placed outside the secondary packagings or in an overpack with one or more complete packages marked in accordance with § 178.503 of this subchapter. Interior supports must be provided to secure the secondary packagings in the original position after the ice or dry ice has dissipated. If ice is used, the outside packaging must be leakproof. If dry ice is used, the outside packaging must permit the release of carbon dioxide gas and otherwise meet the provisions in § 173.217. The primary receptacle and the secondary packaging must maintain their integrity at the temperature of the refrigerant used as well as the temperatures and pressures of air transport to which they could be subjected if refrigeration were lost.

(iii) *Infectious substances shipped in liquid nitrogen.* Primary receptacles capable of withstanding very low temperatures must be used. Secondary packaging must withstand very low temperatures and in most cases will need to be fitted over individual primary receptacles. The primary receptacle and the secondary packaging must maintain their integrity at the temperature of the liquid nitrogen as well as the temperatures and pressures of air transport to which they could be subjected if refrigeration were to be lost. Refrigerated liquid nitrogen packagings must be metal vacuum insulated vessels or flasks (also called ''dry shippers'') vented to the atmosphere to prevent any increase in pressure within the packaging. The use of safety relief valves, check valves, frangible discs, or similar devices in the vent lines is prohibited. Fill and discharge openings must be protected against the entry of foreign materials that might cause an increase in the internal pressure. The package orientation markings specified in § 172.312(b) of this subchapter must be marked on the packaging. The packaging must be designed to prevent the release of any refrigerated liquid nitrogen irrespective of the packaging orientation.

(c) Live animals may not be used to transport infectious substances unless such substances cannot be sent by any other means. An animal that contains or is contaminated with an infectious substance must be transported under terms and conditions approved by the Associate Administrator for Hazardous Materials Safety.

(d) Body parts, organs or whole bodies meeting the definition of Division 6.2 material must be packaged as follows:

(1) In Division 6.2 packaging, as specified in paragraphs (a) and (b) of this section; or

(2) In packaging that meets the requirements of § 173.197(a).

17. Section 173.197 would be revised to read as follows:

§ 173.197 Regulated medical waste.

(a) *General provisions.* Non-bulk and bulk packagings used for the transportation of regulated medical waste must be rigid containers that meet the provisions of subpart B of this part. The packaging must be puncture-resistant for sharps and sharps with residual fluid as demonstrated by conducting the performance tests in part 178, subpart M, of this subchapter on packagings containing materials representative of the sharps and fluids (such as sterile sharps) that are intended to be transported in the packagings.

(b) *Non-bulk packagings.* Except as otherwise provided in this subchapter, non-bulk packagings for regulated medical waste must conform to the requirements of part 178 of this subchapter at the Packing Group II performance level.

(c) *Large packagings.* Large Packagings constructed, tested, and marked in accordance with the requirements of the UN Recommendations and conforming to other requirements of this paragraph (c) may be used for the transportation of regulated medical waste, provided that the inner packagings conform to the requirements of paragraph (e) of this section. Each Large Packaging must be capable of meeting the vibration test specified in § 178.819 of this subchapter. Each Large Packaging is subject to the periodic design requalification requirements for intermediate bulk containers in § 178.801(e) of this subchapter and to the proof of compliance requirements of § 178.801(j) and record retention requirements of § 178.801(l) of this subchapter. Inner packagings used for liquids must be rigid.

(1) *Authorized packagings.* The following Large Packagings are authorized for the transportation of liquid or solid regulated medical waste:

(i) Metal: 50A, 50B, or 50N.

(ii) Rigid plastic: 50H.

(2) *Additional requirements.* Each Large Packaging used to transport liquid regulated medical waste must contain absorbent material in sufficient quantity and appropriate location to absorb the entire amount of liquid present in the event of an unintentional release of contents. Each Large Packaging intended for the transportation of sharps containers must be puncture resistant and capable of retaining liquids and must meet the performance tests specified for intermediate bulk containers intended for the transportation of liquids in subpart O of part 178 of this subchapter.

(d) *Non-specification bulk packaging.* A wheeled cart (CART) or bulk outer packaging (BOP) is authorized as an outer packaging for the transportation of regulated medical waste in accordance with the provisions of this paragraph (d).

(1) *General requirements.* The following requirements apply to the transportation of regulated medical waste in CARTs or BOPs:

(i) Each CART or BOP must have non-bulk inner packagings that conform to paragraph (e) of this section.

(ii) Each CART or BOP must have interior surfaces that are smooth, non-porous, and free of cracks, crevices, and other defects that could damage inner packagings or impede decontamination operations.

(iii) Except as otherwise provided in this paragraph (d), each CART or BOP

must be used exclusively for the transportation of regulated medical waste. Prior to reuse, each CART or BOP must be decontaminated by any means that is effective for neutralizing the infectious substance the packaging previously contained.

(iv) Untreated cultures and stocks of infectious substances that contain Risk Group 4 materials may not be transported in a CART or BOP.

(v) Division 6.1 toxic waste or Class 7 radioactive waste, with the exception of materials that are chemotherapeutic waste, may not be transported in a CART or BOP.

(vi) Division 6.1 or Class 7 chemotherapeutic waste; untreated stocks and cultures of infectious substances that contain Risk Group 2 or 3 pathogenic organisms; unabsorbed liquids; and sharps containers may be transported in a CART or BOP only if packaged in rigid non-bulk packagings that conform to paragraph (a) of this section.

(2) *Wheeled cart (CART).* A CART is authorized as an outer packaging for the transportation of regulated medical waste if it conforms to the following requirements:

(i) Each CART must consist of a solid, one-piece body, mounted on a minimum of four (4) fixed wheels, with a nominal volume that does not exceed 1,655 liters (437 gallons).

(ii) Each CART must be constructed of metal, rigid plastic, or fiberglass with a hinged and gasketed lid that, when closed, prevents leakage during transport.

(iii) Each CART must be capable of meeting the requirements of § 178.603 (drop test), as specified for solids at the Packing Group II performance level.

(iv) Inner packagings must be placed into a CART and restrained in such a manner as to minimize the risk of breakage.

(3) *Bulk outer packaging (BOP).* A BOP is authorized as an outer packaging for regulated medical waste if it conforms to the following requirements:

(i) Each BOP must be constructed of metal or fiberglass and have a capacity of at least 3.5 cubic meters (123.6 cubic feet) and not more than 45 cubic meters (1,590 cubic feet).

(ii) Each BOP must have bottom and side joints of fully welded or seamless construction and a rigid, weatherproof top that prevents the intrusion of water (e.g., rain or snow).

(iii) Each opening in a BOP must be fitted with a closure that prevents the intrusion of water or the release of any liquid during all loading, unloading, and transportation operations.

(iv) In the upright position, each BOP must be leakproof and able to contain a liquid quantity of at least 300 liters (79.2 gallons) with closures open.

(v) Inner packagings must be placed in a BOP in such a manner as to minimize the risk of breakage. Rigid inner packagings may not be placed in the same BOP with plastic film bag inner packagings unless separated from each other by rigid barriers or dividers that prevent damage to the packagings caused by load shifting during normal conditions of transportation.

(vi) Division 6.1 or Class 7 chemotherapeutic waste, untreated cultures and stocks of infectious substances that contain Risk Group 2 or 3 pathogenic organisms, unabsorbed liquids, and sharps may be transported in a BOP only if separated and secured as provided by paragraph (d)(3)(v) of this section.

(e) *Inner packagings authorized for Large Packagings, CARTs, and BOPs.* Inner packagings must be durably marked or tagged with the name and location (city and state) of the offeror, except when the entire contents of the Large Packaging, CART, or BOP originates at a single location and is delivered to a single location.

(1) *Solids.* A plastic film bag is authorized as an inner packaging for solid regulated medical waste transported in a CART, Large Packaging, or BOP. Waste material containing absorbed liquid may be packaged as a solid in a plastic film bag if the bag contains sufficient absorbent material to absorb and retain all liquid during transportation.

(i) The film bag may not exceed a volume of 175 L (46 gallons). The film bag must be marked and certified by its manufacturer as having passed the tests prescribed for tear resistance in ASTM D 1709–97, *Standard Test Methods for Impact Resistance of Plastic Film by the Free-Falling Dart Method,* 1997 Edition, and for impact resistance in ASTM D 1922–94A, *Standard Test Method for Propagation Tear Resistance of Plastic Film and Thin Sheeting by Pendulum Method,* 1994 edition. The film bag must meet an impact resistance of 165 grams and a tearing resistance of 480 grams in both the parallel and perpendicular planes with respect to the length of the bag.

(ii) The plastic film bag must be closed with a minimum of entrapped air to prevent leakage in transportation. The bag must be capable of being held in an inverted position with the closed end at the bottom for a period of 5 minutes without leakage.

(iii) When used as an inner packaging for CARTs or BOPs, a plastic film bag may not weigh more than 10 kg (22 lbs.) when filled.

(2) *Liquids.* Liquid regulated medical waste that is transported in a Large Packaging, CART, or BOP must be packaged in a rigid inner packaging that conforms to the requirements of paragraph (a) of this section. Liquid materials are not authorized for transportation in inner packagings larger than 19 L (5 gallons).

(3) *Sharps.* Sharps that are transported in a Large Packaging, CART, or BOP must be packaged in a puncture-resistant inner packaging (sharps container). Each inner packaging may not exceed 38 L (10 gallons) in volume.

18. A new § 173.199 would be added to read as follows:

§ 173.199 Diagnostic specimens and used health care products.

(a) *Diagnostic specimens.* Diagnostic specimens are excepted from other requirements of this subchapter when offered for transportation or transported in accordance with this section. Diagnostic specimens offered for transportation or transported by aircraft under the provisions of this section are subject to the incident reporting requirements in §§ 171.15 and 171.16 of this subchapter. A diagnostic specimen that meets the definition of a hazard class other than Division 6.2 must be offered for transportation or transported in accordance with applicable requirements of this subchapter.

(1) Diagnostic specimens must be packaged in a triple packaging, consisting of a primary receptacle, a secondary packaging, and an outer packaging.

(2) Primary receptacles must be packed in secondary packaging in such a way that, under normal conditions of transport, they cannot break, be punctured, or leak their contents into the secondary packaging.

(3) Secondary packagings must be secured in outer packagings with suitable cushioning material such that any leakage of the contents will not impair the protective properties of the cushioning material or the outer packaging.

(4) The completed package must be capable of successfully passing the drop test in § 178.603 of this subchapter at a drop height of at least 1.2 meters (3.9 feet). Each package must be clearly and durably marked with the words ''Diagnostic Specimen.''

(b) *Liquid diagnostic specimens.* Liquid diagnostic specimens must be packaged in conformance with the following provisions:

(1) The primary receptacle must be leakproof with a volumetric capacity of not more than 500 ml (16.9 ounces).

(2) Absorbent material must be placed between the primary receptacle and secondary packaging. If several fragile primary receptacles are placed in a single secondary packaging, they must be individually wrapped or separated so as to prevent contact between them. The absorbent material must be of sufficient quantity to absorb the entire contents of the primary receptacles.

(3) The secondary packaging must be leakproof.

(4) For shipments by aircraft, the primary receptacle or the secondary packaging must be capable of withstanding without leakage an internal pressure producing a pressure differential of not less than 95 kPa (0.95 bar, 14 psi).

(5) The outer packaging may not exceed 4 L (1 gallon) capacity.

(c) *Solid diagnostic specimens.* Solid diagnostic specimens must be packaged in a triple packaging, consisting of a primary receptacle, secondary packaging, and outer packaging, that conforms to the following provisions:

(1) The primary receptacle must be siftproof with a capacity of not more than 500 g (1.1 pounds).

(2) If several fragile primary receptacles are placed in a single secondary packaging, they must be individually wrapped or separated so as to prevent contact between them.

(3) The secondary packaging must be siftproof.

(4) The outer packaging may not exceed 4 kg (8.8 pounds) capacity.

(d) *Used health care products.* Used health care products are medical, diagnostic, or research devices and equipment, and personal care products used by consumers, medical professionals, or pharmaceutical providers that may be contaminated with an infectious substance but do not meet the definition of a diagnostic specimen, biological product, or regulated medical waste. Used health care products being returned to the manufacturer are excepted from the requirements of this subchapter when offered for transportation or transported in accordance with this section. For purposes of this section, a health care product is used when it has been removed from its original inner packaging. Used health care products contaminated with or suspected of contamination with a Risk Group 4 infectious substance may not be transported under the provisions of this section.

(1) Each used health care product must be drained of free liquid to the extent practicable and placed in a watertight metal or plastic primary container. The primary container must be designed and constructed in such a manner as to assure that it remains intact under conditions normally incident to transportation. Each primary container used to transport a used health care product that is capable of cutting or penetrating skin or packaging material must be capable of retaining the product without puncture of the packaging under normal conditions of transport. Each primary container must be marked with a BIOHAZARD marking that conforms to 29 CFR 1910.1030(g)(1)(i).

(2) Each primary container must be placed inside a watertight metal or plastic secondary container. The secondary container must be designed and constructed in such a manner as to assure that it remains intact under conditions normally incident to transportation. The secondary container must be marked with a BIOHAZARD marking that conforms to 29 CFR 1910.1030(g)(1)(i).

(3) The secondary container must be placed inside an outer packaging with sufficient cushioning material to prevent movement between the secondary container and the outer packaging. An itemized list of the contents of the primary container and information concerning possible contamination with a Division 6.2 material, including its possible location on the product, must be placed between the secondary container and the outside packaging.

(e) *Training.* Each person who offers or transports a diagnostic specimen or used health care product under the provisions of this section must be informed of the requirements of this section.

19. A new § 173.200 would be added to read as follows:

§ 173.200 Genetically modified micro-organisms.

A genetically modified micro-organism must be packaged as follows:

(a) In accordance with the provisions in § 173.203 or § 173.213 for liquids or solids, respectively, at the Packing Group III performance level; or

(b) In accordance with the provisions of § 173.196(a), except that the completed package is not subject to the test requirements in § 178.609 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

20. The authority citation for part 177 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

21. In § 177.834, paragraphs (a) and (g) would be revised to read as follows:

§ 177.834 General requirements.

(a) *Packages secured in a vehicle.* Any tank, barrel, drum, cylinder, or other packaging not permanently attached to a motor vehicle that contains any Class 2 (gases), Class 3 (flammable liquid), Division 6.1 (poisonous), Division 6.2 (infectious substance), Class 7 (radioactive), or Class 8 (corrosive) material must be secured against movement within the vehicle on which it is being transported, under conditions normally incident to transportation.

* * * * *

(g) *Prevent relative motion between containers.* Containers of Class 1 (explosive), Class 2 (gases), Class 3 (flammable liquid), Class 4 (flammable solid), Class 5 (oxidizing), Division 6.1 (poisonous), Division 6.2 (infectious substance), or Class 8 (corrosive) materials must be so braced as to prevent motion thereof relative to the vehicle while in transit. Containers having valves or other fittings must be so loaded that there will be the minimum likelihood of damage thereto during transportation.

* * * * *

22. In § 177.843, new paragraph (d) would be added to read as follows:

§ 177.843 Contamination of vehicles.

* * * * *

(d) Each transport vehicle used to transport Division 6.2 materials must be decontaminated prior to reuse if a Division 6.2 material is released from its packaging during transportation. Decontamination may be by any means that is effective for neutralizing the material released.

PART 178—SPECIFICATIONS FOR PACKAGINGS

23. The authority citation for part 178 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

24. In § 178.503, paragraph (f) would be added to read as follows:

§ 178.503 Marking of packagings.

* * * * *

(f) A manufacturer must mark every UN specification package that is represented as manufactured to meet the requirements of § 178.609 for packaging of infectious substances with the marks specified in this section. The markings must be durable, legible, and must be readily visible, as specified in § 178.3(a). An infectious substance packaging that

successfully passes the tests conforming to the UN standard must be marked as follows:

(1) The United Nations symbol as illustrated in paragraph (e) of this section.

(2) The code designating the type of packaging and material of construction according to the identification codes for packagings specified in § 178.502.

(3) The text ''CLASS 6.2''.

(4) The last two digits of the year of manufacture of the packaging.

(5) The country authorizing the allocation of the mark. The letters ''USA'' indicate that the packaging is manufactured and marked in the United States in compliance with the provisions of this subchapter.

(6) The name and address or symbol of the manufacturer or the approval agency certifying compliance with subparts L and M of this part. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety.

(7) For packagings meeting the requirements of § 178.609(i)(3), the letter ''U'' must be inserted immediately following the marking designating the type of packaging and material required in paragraph (f)(2) of this section.

25. In § 178.601, paragraphs (c)(1), (c)(2), and (e) would be revised to read as follows:

§ 178.601 General requirements.

* * * * *

(c) * * *

(1) *Design qualification testing* is the performance of the tests prescribed in § 178.603, § 178.604, § 178.605, § 178.606, § 178.607, § 178.608, or § 178.609, as applicable, for each new or different packaging, at the start of production of that packaging.

(2) *Periodic retesting* is the performance of the drop, leakproofness, hydrostatic pressure, and stacking tests, as applicable, as prescribed in § 178.603, § 178.604, § 178.605, or § 178.606, respectively, at the frequency specified in paragraph (e) of this section. For infectious substances packagings that are required to meet the requirements of § 178.609, periodic retesting is the performance of the tests specified in § 178.609 at the frequency specified in paragraph (e) of this section.

* * * * *

(e) *Periodic retesting.* The packaging manufacturer must achieve successful test results for the periodic retesting at intervals established by the manufacturer of sufficient frequency to ensure that each packaging produced by the manufacturer is capable of passing the design qualification tests. Changes in retest frequency are subject to the approval of the Associate Administrator for Hazardous Materials Safety. For single or composite packagings, the periodic retests must be conducted at least once every 12 months. For combination packagings, the periodic retests must be conducted at least once every 24 months. For infectious substances packagings, the periodic retests must be conducted at least once every 24 months.

* * * * *

26. In § 178.609, the section heading, paragraph (c) preceding the table, the introductory text of paragraph (d)(1), paragraphs (d)(1)(i), (d)(1)(iii), (d)(1)(iv), (e), (h)(1), (h)(2), and (i) would be revised to read as follows:

§ 178.609 Test requirements for packagings for infectious substances.

* * * * *

(c) Packagings prepared as for transport must be subjected to the tests in Table I of this paragraph (c), which, for test purposes, categorize packagings according to their material characteristics. For outer packagings, the headings in Table I relate to fiberboard or similar materials whose performance may be rapidly affected by moisture; plastics, which may embrittle at low temperature; and other materials, such as metal, for which performance is not significantly affected by moisture or temperature. Where a primary receptacle and a secondary packaging of an inner packaging are made of different materials, the material of the primary receptacle determines the appropriate test. In instances where a primary receptacle is made of more than one material, the material most likely to be damaged determines the appropriate test.

* * * * *

(d) * * *

(1) Where the samples are in the shape of a box, five must be dropped in sequence:

(i) Flat on the base;

(ii) * * *

(iii) Flat on the longest side;

(iv) Flat on the shortest side; and * * * * *

(e) The samples must be subjected to a water spray that simulates exposure to rainfall of approximately 50 mm (2 inches) per hour for at least one hour. They must then be subjected to the test described in paragraph (d) of this section.

* * * * *

(h) * * *

(1) Samples must be placed on a level, hard surface. A cylindrical steel rod with a mass of at least 7 kg (15 pounds), a diameter not exceeding 38 mm (1.5 inches), and, at the impact end edges, a radius not exceeding 6 mm (0.2 inches), must be dropped in a vertical free fall from a height of 1 m (3 feet), measured from the impact end of the sample's impact surface. One sample must be placed on its base. A second sample must be placed in an orientation perpendicular to that used for the first. In each instance, the steel rod must be aimed to impact the primary receptacle(s). There must be no leakage from the primary receptacle(s) following each impact.

(2) Samples must be dropped onto the end of a cylindrical steel rod. The rod must be set vertically in a level, hard surface. It must have a diameter of 38 mm (1.5 inches) and a radius not exceeding 6 mm (0.2 inches) at the edges of the upper end. The rod must protrude from the surface a distance at least equal to that between the primary receptacle(s) and the outer surface of the outer packaging with a minimum of 200 mm (7.9 inches). One sample must be dropped in a vertical free fall from a height of 1 m (3 feet), measured from the top of the steel rod. A second sample must be dropped from the same height in an orientation perpendicular to that used for the first. In each instance, the packaging must be oriented so that the steel rod will impact the primary receptacle(s). There must be no leakage from the primary receptacle(s) following each impact.

(i) *Variations.* The following variations in the primary receptacles placed within the secondary packaging are allowed without additional testing of the completed package. An equivalent level of performance must be maintained.

(1) *Variation 1.* Primary receptacles of equivalent or smaller size as compared to the tested primary receptacles may be used provided they meet all of the following conditions:

(i) The primary receptacles are of similar design to the tested primary receptacle (*e.g.,* shape: round, rectangular, etc.).

(ii) The material of construction of the primary receptacle (glass, plastics, metal, etc.) offers resistance to impact and a stacking force equal to or greater than that of the originally tested primary receptacle.

(iii) The primary receptacles have the same or smaller openings and the closure is of similar design (*e.g.,* screw cap, friction lid, etc.).

(iv) Sufficient additional cushioning material is used to fill void spaces and to prevent significant movement of the primary receptacles.

(v) Primary receptacles are oriented within the intermediate packaging in the same manner as in the tested package.

(2) *Variation 2*. A lesser number of the tested primary receptacles, or of the alternative types of primary receptacles identified in paragraph (i)(1) of this section, may be used provided sufficient cushioning is added to fill the void space(s) and to prevent significant movement of the primary receptacles.

(3) *Variation 3*. Primary receptacles of any type may be placed within a secondary packaging and shipped without testing in the outer packaging provided all of the following conditions are met:

(i) The secondary and outer packaging combination must be successfully tested in accordance with paragraphs (a) through (h) of this section with fragile (*e.g.,* glass) inner receptacles.

(ii) The total combined gross weight of inner receptacles may not exceed one-half the gross weight of inner receptacles used for the drop test in paragraph (d) of this section.

(iii) The thickness of cushioning material between inner receptacles and between inner receptacles and the outside of the secondary packaging may not be reduced below the corresponding thicknesses in the originally tested packaging. If a single inner receptacle was used in the original test, the thickness of cushioning between the inner receptacles must be no less than the thickness of cushioning between the outside of the secondary packaging and the inner receptacle in the original test. When either fewer or smaller inner receptacles are used (as compared to the inner receptacles used in the drop test), sufficient additional cushioning material must be used to fill the void.

(iv) The outer packaging must pass the stacking test in § 178.606 while empty. The total weight of identical packages must be based on the combined mass of inner receptacles used in the drop test in paragraph (d) of this section.

(v) For inner receptacles containing liquids, an adequate quantity of absorbent material must be present to absorb the entire liquid contents of the inner receptacles.

(vi) If the outer packaging is intended to contain inner receptacles for liquids and is not leakproof, or is intended to contain inner receptacles for solids and is not sift proof, a means of containing any liquid or solid contents in the event of leakage must be provided. This can be a leakproof liner, plastic bag, or other equally effective means of containment.

(vii) In addition, the marking required in § 178.503(f) of this subchapter must be followed by the letter ''U''.

Issued in Washington, D.C., on December 27, 2000, under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

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Part VII

Department of Housing and Urban Development

24 CFR Part 15

Revision of Freedom of Information Act Regulations; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–4292–F–02]

RIN 2501–AC51

Revision of Freedom of Information Act Regulations

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's Freedom of Information Act (FOIA) regulations in their entirety. It implements the statutory requirements of the Electronic Freedom of Information Act (EFOIA) and makes various streamlining and organizational changes to improve the clarity of the regulatory text. Additionally, this rule incorporates a plain language approach to regulatory drafting by adopting a written style that promotes responsive, accessible and understandable written communication. This rule follows the publication of a July 10, 2000 proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* February 21, 2001.

FOR FURTHER INFORMATION CONTACT: Marylea W. Byrd, Assistant General Counsel, FOIA Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, Room 10248; telephone (202) 708–3866 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 15 contain the policies and procedures governing public access to HUD records under the Freedom of Information Act (FOIA) (5 U.S.C. 552). Subject to certain statutory exceptions, the FOIA gives persons the right to request and receive a wide range of information from any Federal agency. Congress has amended the FOIA several times since its enactment in 1982. The most recent amendment occurred in 1996 with the enactment of the Electronic Freedom of Information Act (EFOIA) (Public Law 104–231, approved October 2, 1996).

Pursuant to 5 U.S.C. 552(a)(3)(B), EFOIA requires that readily reproducible records be made available in the format requested, including an electronic format, where applicable. EFOIA also requires that agencies make certain information available over ''electronic reading rooms'' on the Internet (5 U.S.C. 552(a)(2)(E)). Additionally, EFOIA modifies the deadlines and procedures for processing FOIA requests to provide faster processing for some requests and to assist agencies in reducing backlogs and delays. For example, EFOIA permits agencies to implement multitrack FOIA processing systems based on the estimated amount of work or time (or both) involved in processing individual FOIA requests (5 U.S.C. 552(a)(6)(D)).

On July 10, 2000 (65 FR 42578), HUD published a proposed rule implementing the statutory directives contained in the EFOIA. In addition to EFOIA-related changes, HUD proposed to revise 24 CFR part 15 in its entirety to improve the clarity of its FOIA requirements and procedures. These proposed changes included the consolidation of HUD's FOIA regulations into a single subpart of 24 CFR part 15 (currently, the FOIA regulations are located in seven separate subparts) and the clarification of procedures for requesting HUD records under FOIA.

Since it is important that the requirements governing public access to HUD's records be clear and readily understandable, HUD also proposed to rewrite its FOIA requirements using plain language. The preamble to the July 10, 2000 proposed rule provides additional details regarding the proposed amendments to 24 CFR part 15.

II. Significant Differences Between this Final Rule and the July 10, 2000 Proposed Rule

This final rule makes effective the policies and procedures contained in the July 10, 2000 proposed rule and takes into consideration the public comments received on the proposed rule. The major changes made by this final rule in response to public comment are described below. The rationales for these changes are discussed in greater detail in Section III. of this preamble.

(1) *Incorporation of statutory exemptions to FOIA requirements (§ 15.3).* HUD has added a new § 15.3, which contains the nine statutory exemptions to FOIA disclosure authorized under 5 U.S.C. 552(b)(1).

(2) *Clarification of records that are available at HUD's electronic reading room (§ 15.102 (b)).* HUD has modified this paragraph to clarify that, pursuant to EFOIA, only those documents created after November 1, 1996 are maintained on HUD's electronic reading room.

(3) *Address of HUD's electronic reading room (§ 15.103(c)).* HUD has given a more detailed URL for its Internet web site in order to facilitate easier access to the Department's FOIA electronic reading room.

(4) *Estimate of time for HUD to respond under unusual circumstances (§ 15.104(c)).* HUD has clarified that it will provide an estimate of the time needed to respond to a FOIA request in cases where unusual circumstances enable the Department to extend the period for providing a response.

(5) *Determination of effective date for multitrack assignment when a FOIA request is received by the wrong HUD office (§ 15.105 (a)).* HUD has clarified that FOIA requests received by the wrong HUD office will be assigned within their respective tracks according to either the date on which the request was received by the appropriate office or the end of the ten working day period in which the request should have been forwarded to the proper office.

(6) *Assignment of FOIA requests for expedited processing (§ 15.105(b)).* HUD has clarified that a FOIA request may be assigned for expedited processing at the Department's discretion in absence of compelling need pursuant to 5 U.S.C. 552(a)(6)(E)(i).

(7) *FOIA requests misdirected to HUD (§ 15.107).* HUD has clarified that FOIA requests misdirected to HUD are subject to the requirements of 15.104(a).

(8) *FOIA fee schedule (§ 15.110(c)).* HUD has added a section to the FOIA fee schedule to provide that duplication on electronic format such as CD ROM's and diskette will be charged at actual cost.

(9) *Location of FOIA reading rooms (Appendix A).* This final rule codifies the appendix contained in the July 10, 2000 proposed rule. This appendix provides the addresses of FOIA Reading Rooms located in HUD field offices throughout the country and will assist the public in accessing the reading rooms.

III. Discussion of the Public Comments Received on the July 10, 2000 Proposed Rule

The public comment period on the July 10, 2000 proposed rule closed on September 8, 2000. By close of business on this date, HUD had received 3 public comments. Comments were submitted by a housing authority; a joint comment was submitted by a public interest group and an information clearinghouse; and another joint comment was submitted by various legal aid groups. This section of the

preamble presents a summary of the significant issues raised by the public comments on the July 10, 2000 proposed rule and HUD's responses to these comments.

Comment: The final rule should retain FOIA statutory exemptions. The July 10, 2000 proposed rule would have removed regulatory language restating the FOIA statutory exemptions. Two commenters recommended that the final rule retain this language. Additionally, one of the commenters suggested that the exemptions, themselves, be rewritten in plain language.

HUD Response. HUD agrees that, for the convenience of readers, the FOIA statutory exemptions listed at 5 U.S.C. 552(b)(1) should be included in the final rule. Accordingly, this rule states the statutory exemptions in a new § 15.3. HUD will not, however, adopt the suggestion that the statutory exemptions be rewritten in plain language since to do so could unintentionally change their legal meaning or application. Thus, the regulatory exemptions language at § 15.3 continues to track the statutory exemptions set forth in FOIA.

Comment: The rule should clarify those records that are available through HUD's web site. One commenter suggested that HUD's proposed rule implied that all hard copy records in its reading rooms are also available through HUD's web site and that a clarification is needed to distinguish which records are available only in the reading room.

HUD Response. HUD agrees that a clarification is needed to reflect EFOIA's requirement that records created on or after a certain date be made available on the Department's website. Accordingly, HUD has revised § 15.102 to make clear that hard copy records are available in HUD's designated reading rooms and records created on or after November 1, 1996 are also available on HUD's website pursuant to the requirements of FOIA at 5 U.S.C. 552(a)(2)(E).

Comment: The rule does not adequately explain the reasons HUD may grant itself an extension of time to respond due to a FOIA request because of unusual circumstances or provide a date by which a response is expected. One commenter wrote that the proposed rule at § 15.104(c) was imprecise because it did not state that HUD would provide the requester with the date on which a response is expected nor with an explanation of the reasons for the delay.

HUD Response. The proposed rule at § 15.104(c) clearly stated the three ''unusual circumstances'' that constitute grounds under which HUD may grant itself an extension of time in which to respond to a request. This final rule adopts these provisions of the proposed rule. HUD has, however, modified § 15.104(c) to clarify that a specific estimate of time necessary to respond to the request must be provided to the requester.

Comment: The standards regarding multitrack processing are too vague. One commenter wrote that HUD's descriptions of the factors it would use to determine whether to place a request in its ''simple'' or ''complex'' track is too vague to permit requesters to know whether a given request would qualify for the fastest track.

HUD response. HUD disagrees with the commenter. This final rule adopts the language of proposed § 15.105(a) establishing the factors that HUD will consider in determining whether to assign a FOIA request to the ''simple'' or ''complex'' track. These include an overall assessment of the time and work associated with obtaining the documents requested with specific consideration given to (1) whether the request involves the processing of voluminous documents and (2) whether the request involves responsive documents from three or more organizational units. It is impracticable under any set of standards to determine with certainty the proper classification of a FOIA request until HUD has actually had the opportunity to evaluate the request. Persons submitting a request for documents should therefore, to the best of their ability at the time of submission, categorize their request in light of these factors.

Comment: HUD should establish a third track for processing FOIA requests involving electronic information, particularly those requests involving voluminous documents maintained in an electronic format. One commenter wrote that FOIA requests would be more likely to be assigned to the complex track if the request involved voluminous documents—even in cases where they are maintained in electronic format. Therefore, HUD should establish a third track for the processing of requests for electronically maintained information.

HUD response. A FOIA request will not automatically be assigned to the complex track merely because it involves voluminous records. Similarly, a FOIA request for information existing in electronic format does not necessarily qualify it on its face for assignment to the simple track. Whether a particular request involving voluminous documents maintained in electronic format is assigned to the simple or complex track will be determined according to the same standards applicable to all FOIA requests. For example, pursuant to the EFOIA amendments, reprogramming may be necessary in regard to the search and retrieval of electronic records. Such efforts, depending on their extent and complexity, may necessitate assigning a particular request to the complex track even though the information is maintained in an electronic format.

HUD disagrees that a third processing track for requests involving electronically maintained records should be implemented. The Department's proposed two-tiered processing approach provides the best avenue for delineating between different levels of FOIA requests and further change would not promote the efficient processing of these requests.

Comment: Where requests for classified records are referred to another agency, the processing date should be set as the date the request is received by HUD. One commenter suggested that the proposed rule at § 15.107 be amended to provide that referrals be processed according to the date HUD received the request and that the requester be given notice of the referral.

HUD response. HUD has revised § 15.107 to make clear that the requirements of § 15.104(a) regarding referral of a misdirected request to the appropriate office also apply to § 15.107. The Department will not, however, assert jurisdiction over another agency's processing procedures by mandating that the date HUD receives the misdirected request constitutes the date on which the request is processed by the agency to which it is ultimately referred.

This comment raised an issue concerning how the Department will handle, for processing purposes, the assignment of FOIA requests that have been directed to the wrong office within HUD. Therefore, HUD has revised § 15.105(a) to clarify that where a request has been misdirected within the Department, the date for assigning the request for processing will be the earlier of the date on which (1) the appropriate office received the request or (2) the end of the 10 working day period in which the request should have been referred to the appropriate office under § 15.104(a).

Comment: The rule does not address duplication charges for electronic media based records. HUD received a comment that the FOIA fee schedule did not take into account charges for reproduced electronically based media, such as CD ROMs and diskettes.

HUD response. HUD has revised proposed § 15.110(c) to add a provision specifying that the amount charged for reproduction of electronically based media such as CD ROMs and diskettes will be actual cost.

Comment: HUD should increase the information accessible on its website. One commenter suggested that HUD should continue to build on its existing information systems and provided examples of additional information that HUD should make available on its website.

HUD response. While this comment does not involve any suggestions for revisions of the Department's proposed FOIA regulation, per se, HUD is continuing to improve upon and expand customer access to information on the Department's website.

Comment: The Internet reference to HUD's reading room is not sufficiently specific. One commenter wrote that the reference to HUD's general website address in § 15.102 is not specific enough to enable the public to readily locate indices and frequently requested materials which the EFOIA requires be maintained online.

HUD response. HUD agrees that a citation in the regulation to HUD's specific web address containing the Department's reading room FOIA bookshelf is preferable. HUD has therefore revised § 15.102(b) to reflect the Department's web address for the online FOIA bookshelf contained in the Department's reading room.

Comment: HUD should insert hypertext links as a part of indices. One commenter suggested that the value of on-line indices would be enhanced if the indices included hypertext links to information and if they also included detailed explanations of the specific HUD office to which requests for various kinds of information should be directed.

HUD response. While this comment does not involve a suggestion for revision of HUD's proposed FOIA regulation, HUD will keep in mind the comment pertaining to the on-line treatment of indices.

Comment: HUD should adopt an expanded definition for ''located'' in the context of electronic records. One commenter proposed that HUD adopt a definition for ''located,'' which would specify that electronic records should be considered ''located'' at particular HUD offices if the records are electronically accessible by personnel at those offices, regardless of where the machines on which the records are stored may be located.

HUD response. HUD has determined that a definition for ''located'' which would define an electronic record as located anywhere that it can be accessed within the agency would be confusing. While electronic records within the agency can be accessed from more than one particular office, HUD still considers it important that the particular office that has jurisdiction of those records be held accountable for their accuracy and maintenance. Therefore, for purposes of the FOIA, HUD declines to broaden the concept that electronic records are ''located'' anywhere other than within the particular office which has responsibility for those records.

Comment: HUD should provide an exact date for providing records in response to FOIA requests. One commenter advised that HUD should provide an exact date by which information will actually be provided after HUD approves a FOIA request and that records should be provided no later than twenty business days after HUD issues its response.

HUD response. In the majority of FOIA requests, HUD's response either provides the requested records, provides appropriate exemptions for withholding the records, or both. In other instances, usually at the suggestion of the FOIA requester, the Department will offer the requester the opportunity to inspect the documents, as opposed to providing copies. In some instances, HUD will provide status letters which outline the Department's existing backlog and notifies the requester of their place in HUD's first-in, first-served queue of pending requests. In these instances, it is not practical to provide an exact date in which HUD will respond to the request.

Comment: HUD should broaden the definition of compelling need for the purpose of granting expedited processing to additional types of FOIA requests. One commenter proposed that HUD expand the statutory bases of ''compelling need,'' contained in § 15.105(b), to include circumstances involving expiring Section 8 subsidy contracts. The commenter also suggested that the regulation be revised to reflect that HUD is not limited to the statutory bases of compelling need in order to grant expedited processing.

HUD response. The statutory definition of compelling need limits such a finding to circumstances evidencing an imminent threat to life or safety or, in the case of a person primarily engaged in the dissemination of information, a need to inform the public about actual or alleged federal government activity. HUD may, however, assign FOIA requests for expedited processing where appropriate despite the absence of compelling need. Accordingly, HUD has revised the rule to reflect this discretion pursuant to 5 U.S.C. 552(a)(6)(E)(i).

Comment: HUD should withhold information only if there is a need in the public interest to withhold it. One commenter proposed that HUD reintroduce a provision from its present regulation at § 15.21 that the Department would only withhold a requested record if it came within one of FOIA exemptions and there is a need in the public interest to withhold it.

HUD response. HUD follows the FOIA policy guidance set forth by President Clinton and Attorney General Reno in their October 1993 statements and has determined not to promulgate any criteria in its regulations concerning disclosure of information which might be at variance with those statements. While both statements enunciated standards for the treatment and disclosure of records under the FOIA, neither statement contained an explicit requirement that records not be withheld unless, in addition to applicability of FOIA's exemptions, there ''is a need in the public interest to withhold [the records].'' HUD has therefore determined that the revised rule better conforms with the policy statements of the President and the Attorney General.

Comment: HUD should specifically allow disclosure of certain housing project financial information pursuant to the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA). One commenter proposed that § 15.109(a) be revised to allow release of information from profit and loss statements of housing projects to HUD residents, tenant organizations, and their representatives in the context of multifamily operations and restructuring activities, citing the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of the Fiscal Year 1998 HUD Appropriations Act, Public Law 105–65, approved October 27, 1997) (MAHRA).

HUD response. Section 514(f) of MAHRA requires HUD to establish procedures to provide an opportunity for tenants of projects, residents of the neighborhood, the local government, and other affected parties to participate effectively and on a timely basis in restructuring activities of multifamily housing projects. To this end, HUD is working on a proposed rule implementing the statutory directives of MAHRA which will include procedures under which certain information will be made available to tenants and other groups pursuant to MAHRA. Accordingly, HUD has determined that the proposed MAHRA rule is the proper vehicle for dealing with the types of information to be released under MAHRA and the procedures for making that information available.

Comment: HUD should waive fees for certain low income individuals and constituent groups. One commenter proposed that HUD waive fees for certain requesters, including low-income HUD residents and homeowners, tenant organizations, advocates representing low-income residents, homeowners or tenant organizations and HUD funded technical assistance grantees. In the alternative, the commenter suggested that these requesters be included in the existing category for news media and educational and scientific research.

HUD response. HUD's determination of whether a request for a fee waiver or reduction is warranted is governed by whether disclosure of the information is in the public interest because it is (1) likely to contribute significantly to public understanding of the operations or activities of the government and (2) is not primarily in the commercial interest of the requester. In making this determination, HUD follows fee waiver guidance issued by the Department of Justice. HUD does not believe it prudent to provide blanket fee waivers to any particular individuals or groups. Instead, any requester who requests a fee waiver or reduction should justify in light of statutory and regulatory provisions why they qualify for such a waiver or reduction.

Additionally, the FOIA prescribes certain categories of fee requesters and the types of fees which can be assessed to these requesters. The individuals and groups mentioned by the commenter ordinarily would not qualify for a waived or reduced fee assessment as news media or educational and scientific research requesters.

IV. Findings and Certifications

Environmental Impact

This rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). The revision of the FOIA-related provisions of 24 CFR part 15 falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule before publication and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule is procedural. Accordingly, the rule would not have any impact on the substantive rights or duties of small entities requesting HUD records under the Freedom of Information Act. Furthermore, the fees charged under this rule are limited by FOIA to direct costs of searching for, reviewing, and duplicating the records processed for requesters and are not economically significant.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends 24 CFR part 15 as follows:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

1. Revise the heading of part 15 to read as set forth above.

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

Authority: 42 U.S.C. 3535(d).

Subpart A also issued under 5 U.S.C. 552.

Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333.

Subparts C and D also issued under 5 U.S.C. 301.

3. Revise subpart A to read as follows:

Subpart A—Purpose and Policy

Sec.

§ 15.1 What is the purpose of this part?
§ 15.2 What definitions apply to this part?
§ 15.3 What exemptions are authorized by 5 U.S.C. 552?

§ 15.1 What is the purpose of this part?

(a) *Subpart B of this part.* Subpart B of this part describes the procedures by which HUD makes documents available under the Freedom of Information Act (FOIA) (5 U.S.C. 552). Subpart A of this part applies to all HUD organizational units; however, applicability of subpart A to the Office of the Inspector General is subject to parts 2002 and 2004 of the title.

(b) *Subpart C of this part.* Subpart C of this part describes the procedures HUD follows in responding to subpoenas or demands of courts and other agencies to produce or disclose documents.

(c) *Subpart D of this part.* Subpart D of this part describes the procedures HUD follows concerning the testimony of its employees in legal proceedings.

(d) *Inapplicability of subparts B and C to Office of Inspector General.* Subparts B and C of this part do not apply to employees in the Office of the Inspector General. The procedures that apply to employees in the Office of the Inspector General are described in part 2004 of this title.

§ 15.2 What definitions apply to this part?

The following definitions apply to this part.

(a) *Terms defined in part 5 of this title.* The terms *HUD, Secretary,* and *Organizational unit* are defined in part 5 of this title.

(b) Other terms used in this part. As used in this part:

Business information means commercial or financial information provided to HUD by a submitter that arguably is protected from disclosure under Exemption 4 (42 U.S.C. 552(b)(4)) of FOIA.

Duplication means the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation (*e.g.,* magnetic tape or disk), among others.

Educational institution means:

(1) A preschool;

(2) A public or private elementary or secondary school;

(3) An institution of graduate higher education;

(4) An institution of undergraduate higher education;

(5) An institution of professional education; or

(6) An institution of vocational education, that primarily (or solely) operates a program or programs of scholarly research.

Employee of the Department means a current or former officer or employee of the United States appointed by or subject to the supervision of the Secretary, but does not include an officer or employee covered by part 2004 of this title.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Legal proceeding includes any proceeding before a court of law or other authority, i.e., administrative board or commission, hearing officer, arbitrator or other body conducting a quasi-judicial or legislative proceeding.

Legal proceeding among private litigants means any legal proceeding in which the United States is not a party.

Legal proceeding in which the United States is a party means any legal proceeding including as a named party the United States, the Department of Housing and Urban Development, or any other Federal executive or administrative agency or department, or any official thereof in his official capacity.

News means information that is about current events or that would be of current interest to the public.

Person means person as defined in 5 U.S.C. 551(2). It includes corporations and organizations as well as individuals.

Review means the process of examining a document located in response to a request to determine whether any portion of it may be withheld, excising portions to be withheld, and otherwise preparing the document for release. Review time includes time HUD spends considering any formal objection to disclosure made by a submitter under § 15.108. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

Search includes all time spent looking manually or by automated means for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

Submitter means any person or entity who provides business information, directly or indirectly, to HUD. The term includes, but is not limited to, corporations, State governments, and foreign governments.

§ 15.3 What exemptions are authorized by 5 U.S.C. 552?

(a) The classes of records authorized to be exempted from disclosure by 5 U.S.C. 552 are those which concern matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Department;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Department;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Department in connection with its responsibility for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

4. Revise subpart B to read as follows:

Subpart B—FOIA Disclosure of Information

Sec.

15.101 What is HUD's overall policy concerning disclosing identifiable records?
15.102 Where and when may I inspect and copy records that FOIA requires HUD to make regularly available to the public?
15.103 How can I get other records from HUD?
15.104 What are the time periods for HUD to respond to my request for records?
15.105 How will HUD process my request?
15.106 How will HUD respond to my request?
15.107 How does HUD handle requests that involve classified records?
15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?
15.109 How will HUD respond to a request for information from Form HUD–92410 (Statement of Profit and Loss)?
15.110 What fees will HUD charge?
15.111 How do I appeal a denial of my request for records or a fee determination?
15.112 How will HUD respond to my appeal?

§ 15.101 What is HUD's overall policy concerning disclosing identifiable records?

HUD will fully and responsibly disclose its identifiable records and information consistent with competing public interests concerning the national security, personal privacy, agency deliberative process, and obligations of confidentiality as are recognized by FOIA. HUD will make a record available in the form or format requested, if the record is readily reproducible in that format.

§ 15.102 Where and when may I inspect and copy records that FOIA requires HUD to make regularly available to the public?

(a) You may inspect and copy hardcopy records, including indices of the records, that section 552(a)(2) of FOIA requires HUD make available to the public at HUD's reading rooms. HUD has reading rooms in Headquarters in Washington, DC and in each of the Secretary's Representative's offices. These reading rooms are open during

the business hours for the HUD office in which they are located.

(b) For records created on or after November 1, 1996, this information is also available to you through HUD's Internet web site at http://www.hud.gov/ogc/bshelf2a.html.

§ 15.103 How can I get other records from HUD?

(a) *Generally.* You may submit a written request for copies of records in person or by mail.

(b) *Records located in a HUD field office.* If you are submitting a request for records located in a HUD field office, you should deliver or mail your request to the FOIA Liaison in the appropriate HUD Field Office.

(c) *Records located in HUD headquarters.* If you are submitting a request for records located in HUD Headquarters, you should deliver or mail your request to the FOIA Division, Office of the General Counsel. You may also use the FOIA electronic request form on HUD's Internet web site at http://www.hud.gov/ogc/foiafree.html.

(d) *What should I include in my FOIA request?* In your FOIA request you should:

(1) Clearly state that you are making a FOIA request. Although Federal agencies are required to process all requests for documents as Freedom of Information Act requests, whether or not specifically designated as FOIA requests, failure to clearly state that you are making a FOIA request could unduly delay the initial handling of your correspondence through HUD's FOIA processing;

(2) Reasonably describe the records you seek. Include information that you may know about the documents you are requesting;

(3) Indicate the form or format in which you would like the record made available;

(4) State your agreement to pay the fee. You may specify a dollar amount above which you want HUD to consult with you before you will agree to pay the fee;

(5) Indicate the fee category that you believe applies to you (see § 15.110);

(6) If you are making a request on behalf of another person for information about that person, include a document signed by that person authorizing you to request the information on his or her behalf; and

(7) If you are requesting expedited processing, your request should set out the facts you believe show that there is a compelling need (see § 15.104(d)) to expedite processing of your request.

§ 15.104 What are the time periods for HUD to respond to my request for records?

(a) *What time limits generally apply?* If you have met the fee requirements of § 15.110, HUD, in general, will respond within 20 working days after the correct office receives your request. If you have sent your request to the wrong office, that office will send it to the correct office within 10 working days and will send you an acknowledgment letter.

(b) *What time limits apply to requests made on behalf of another person?* The time limits described in paragraph (a) of this section also apply to requests you make on behalf of another person for information about that person. However, the time limits will not commence to run until HUD's receipt of the document signed by that person authorizing you to request information on his or her behalf. If you make your request on behalf of another person without including such signed authorization, HUD will inform you of the authorization needed.

(c) *What time limits apply in unusual circumstances?* If you have requested an especially large number of records, the records are not located in the office handling the request, or HUD needs to consult with another government office, HUD will notify you that extra time is required and provide an estimate of that time. If the extra time needed is more than 10 working days beyond the general time limit set out in paragraph (a) of this section, HUD will offer you any opportunity to limit the scope of your request so that HUD may process it within the extra 10 working day period.

(d) *What time limits apply to my request for expedited processing?* If you requested expedited processing, HUD will notify you within 10 working days after it receives your request whether it will grant expediting processing.

§ 15.105 How will HUD process my request?

(a) *Multitracking.* (1) HUD places each request in one of two tracks. HUD places requests in its simple or complex track based on the amount of work and time involved in processing the request. Factors HUD will consider in assigning a request in the simple or complex track will include whether the request involves the processing of voluminous documents and/or whether the request involves responsive documents from three or more organizational units. Within each track, HUD processes requests in the order in which they are received.

(2) For requests that have been sent to the wrong office, HUD will assign the request within each track using the earlier of either:

(i) The date on which the request was referred to the appropriate office; or,

(ii) The end of the 10 working day period in which the request should have been referred to the appropriate office under § 15.104(a).

(b) Expedited processing. HUD may take your request or appeal out of normal order if HUD determines that you have a compelling need for the records or in other cases as determined by the agency. If HUD grants your request for expedited processing, HUD will give your request priority and will process it as soon as practicable. HUD will consider a compelling need to exist if:

(1) Your failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or a threatened loss of substantial due process rights; or,

(2) You are primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged Federal Government activity.

§ 15.106 How will HUD respond to my request?

(a) *Who will respond to my request?* (1) The FOIA Division of the Office of General Counsel in HUD Headquarters and the FOIA liaisons in each HUD Field Office are authorized to release copies of any HUD records unless disclosure is clearly not appropriate under FOIA.

(2) The FOIA Division in HUD Headquarters and the FOIA liaisons in each HUD Field Office may deny a request for a record in accordance with the provisions of FOIA and this part.

(b) *What type of a response will I receive?* Within the time limit described in § 15.103, HUD will either:

(1) Agree to give you all the records you requested;

(2) Advise you that HUD will not give you some or all of the records you requested. Any denial or partial denial of a requested record must be concurred in by the FOIA Division in Headquarters, by counsel in the Field Offices, or by counsel in HUD's Departmental Enforcement Center Satellite Offices. In this case, HUD will:

(i) Explain why it has decided not to comply fully with your request, citing specific exemptions where applicable;

(ii) Describe the records denied or, if there are fewer than 21 records denied, list them specifically;

(iii) Estimate the volume of the records denied unless doing so would harm a protected interest; and

(iv) Explain how to appeal that decision, and provide the name and

address of the HUD official to whom you should submit your appeal.

(3) Tell you that HUD's estimate of the fee is more than you have agreed to pay and ask to confer within 10 days to see if you can reformulate your request so that HUD can meet your request at a fee that is acceptable to you; or

(4) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable, and will provide you 10 days to pay, or commit to pay, the fee.

(5) If you requested expedited processing, advise you whether your request is granted or denied and, if your request is denied, advise you of your right to appeal.

(c) *What action may HUD take if I fail to respond?* If you fail to respond within a period specified in this subpart, HUD may consider your request for records withdrawn and may terminate processing of your request.

§ 15.107 How does HUD handle requests that involve classified records?

If your request involves the release of documents that are classified under Executive Order 12958, HUD will refer your request and the pertinent documents to the originating agency for processing according to the requirements of § 15.104(a). HUD may refuse to confirm or deny the existence of the requested information if the originating agency determines that the fact of its existence is itself classified.

§ 15.108 What are HUD's policies concerning designating confidential commercial or financial information under Exemption 4 of the FOIA and responding to requests for business information?

(a) *HUD's general policy concerning business information which may be considered as confidential commercial or financial information.* Except as provided in this section or otherwise required by law, HUD officers and employees may not disclose business information which is considered as confidential commercial or financial information to anyone other than to HUD officers or employees who are properly entitled to the information to perform their official duties.

(b) *How does a submitter make a claim that business information is confidential commercial or financial information?* (1) If you are a submitter, you may request confidential treatment of business information at the time the information is submitted to HUD or within a reasonable time after it is submitted.

(2) To obtain a designation of confidentiality, you must:

(i) Support your request with an authorized statement or a certification giving the facts and the legal justification for your request and stating that the information has not been made public; and

(ii) Clearly designate the information that you consider confidential.

(3) Your designation of confidentiality will expire 10 years after the date the information was submitted to HUD, unless you have provided a reasonable explanation for a later expiration date.

(c) *How will HUD respond to a request for business information?* If the information requested has been designated in good faith by the submitter as information to be protected under 5 U.S.C. 552(b)(4) (''Exemption 4'') or if HUD has reason to believe that the information may be protected by Exemption 4, HUD shall:

(1) Unless an exception in paragraph (c)(2) of this section applies, promptly notify the submitter about the request or the administrative appeal and give the submitter 10 working days to submit a written objection to disclosure. HUD will describe the requested business information or will provide copies of all or a portion of the records;

(2) If any of the following circumstances apply, HUD will not notify the submitter:

(i) HUD determines that the information should not be disclosed;

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

(3) A law other than FOIA requires HUD to disclose the information;

(4) A HUD regulation requires HUD to disclose the information. The regulation must:

(i) Have been adopted pursuant to notice and public comment; and

(ii) Specify narrow classes of records submitted to HUD that are to be released under the FOIA.

(d) *Notice to requester.* At the same time HUD notifies the submitter, HUD will also notify the requester that the request is subject to the provisions of this section and that the submitter is being afforded an opportunity to object to disclosure of the information.

(e) *Opportunity to object to disclosure.* If the submitter timely objects to disclosure, HUD will consider the submitter's objections, but will not be bound by them. HUD generally will not consider conclusory statements that particular information would be useful to competitors or would impair sales, or other similar statements, sufficient to justify confidential treatment. Information provided by a submitter or its designee may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* If after considering the submitter's objections, HUD decides to disclose business information over the objection of a submitter, HUD will send a written notice of intent to disclose to both the submitter and the requester. HUD will send these notices at least 10 working days before the specified disclosure date. The notices will include:

(1) A statement of the reasons why HUD rejected the submitter's disclosure objections;

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

(3) A disclosure date.

(g) *What other policies apply to a submitter?*

(1) *HUD notice of FOIA lawsuit.* HUD will promptly notify the submitter of any suit to compel HUD to disclose business information.

(2) *Determination of confidentiality.* HUD will not determine the validity of any request for confidentiality until HUD receives a request for disclosure of the information.

(3) *Current mailing address for the submitter.* Each submitter must give HUD a mailing address for receipt of any notices under this section, and must notify HUD of any change of address.

§ 15.109 How will HUD respond to a request for information from Form HUD–92410 (Statement of Profit and Loss)?

(a) *To whom will HUD disclose the information?* HUD will release information from Form HUD–92410 (or a HUD approved substitute form that the mortgagor may have submitted) only to eligible potential purchasers and only during the period specified by HUD for the mortgage sale.

(b) *Under what conditions will HUD release such information?* HUD will release the information only if all of the following three conditions are met:

(1) The information concerns a project that is subject to a HUD-held mortgage which HUD is selling under the authority of sections 207 (k) and (l) of the National Housing Act (12 U.S.C. 1713 (k) and (l)) or section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)).

(2) The eligible potential purchasers have agreed to:

(i) Keep the information confidential;

(ii) Disclose the information only to potential investors in the mortgage and only for the period specified by HUD for the mortgage sale and to notify those potential purchasers of their obligations under this section;

(iii) Use the information only to evaluate the mortgage in connection with the mortgage sale; and

(iv) To follow disclosure procedures for that sale that have been established by the Secretary.

(3) The potential investors in the mortgage have agreed to keep the information confidential and to use the information only to evaluate the mortgage in connection with their investment decision.

(c) *To whom may potential investors disclose such information?* Potential investors in the mortgage may disclose the information to other entities only if the disclosure is:

(1) Necessary for the investor's evaluation of the mortgage;

(2) Made in accordance with disclosure procedures for the specific sale that have been established by HUD; and

(3) Limited to the period specified by HUD for the mortgage sale.

(d) *What sanctions are available for improper disclosure of such information?* An eligible potential purchaser or a potential investor (who has received the information from a potential purchaser and has been notified by that entity of its obligations under paragraph (b) of this section), who discloses information from Form HUD–92410 in violation of this section, may be subject to sanctions under part 24 of this title.

§ 15.110 What fees will HUD charge?

(a) *How will HUD determine your fee?* HUD will determine your fee based on which category of requester you are in and on the other provisions of this section. With your request, you should submit information to help HUD determine the proper category. If HUD cannot tell from your request, or if HUD has reason to doubt the use to which the records will be put, HUD will ask you to provide additional information before assigning the request to a specific category.

(b) *What are the categories of requesters?* (1) *Commercial use requester.* You are a commercial use requester if you request information for a use or purpose that furthers your commercial, trade, or profit interests or those interests of the person on whose behalf you have made the request. In determining whether your request properly belongs in this category, HUD determines the use to which you will put the documents requested.

(2) *Educational requester.* You are an educational requester if your request is on behalf of an educational institution and you do not seek the records for a commercial use, but to further scholarly research.

(3) *Non-commercial scientific requester.* You are a non-commercial scientific requester if you are not a commercial use requester and your request is on behalf of an organization that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(4) *Representative of the news media requester.* (i) You are a representative of the news media requester if you actively gather news for an entity that is primarily organized and operated to publish or broadcast news to the public.

(ii) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news) who make their products available for purchase or subscription by the general public.

(iii) Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but HUD may also look to the past publication record of a requester in making this determination.

(iv) If you are a representative of the news media requester, HUD will not consider you to be a commercial use requester.

(5) *Other requester.* You are considered an ''other'' requester if you do not fall within the categories of requesters described in this paragraph (b).

(c) *FOIA Fee Schedule.* The following table sets out the Fee Schedule that HUD uses to determine your fee. The rates for professional and clerical search and review includes the salary of the employee performing the work. The duplication cost includes the cost of operating duplicating machinery. The computer run time includes the cost of operating a central processing unit for that portion of the operating time attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search. HUD's fee schedule does not include overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

FOIA FEE SCHEDULE

Activity	Rate	Commercial use requester	News media, educational research, or scientific research requester	Other requester
(1) Professional search	$37.00 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
(2) Professional review	$37.00 per hour	Applies	Does not apply	Does not apply.
(3) Clerical search	$16.35 per hour	Applies	Does not apply	Applies. No charge for first two hours of cumulative search time.
(4) Clerical review	$16.35 per hour	Applies	Does not apply	Does not apply.
(5) Programming services	$35.00 per hour	Applies	Does not apply	Applies.
(6) Computer run time (includes only mainframe search time not printing).	The direct cost of conducting the search.	Applies	Does not apply	Applies.
(7) Duplication costs	$0.15 per page	Applies	Applies. No charge for first 100 pages.	Applies. No charge for first 100 pages.
(8) Duplication costs—tape, CD ROM or diskette.	Actual Cost	Applies	Applies	Applies.

(d) *How does HUD assess review charges?* HUD will assess review charges only for the first time it analyzes the applicability of a specific exemption to a particular record or portion of a record. HUD will not charge for its review at the administrative appeal level of an exemption already applied. If HUD has withheld in full a record or portions of a record under an exemption which is subsequently determined not to apply, HUD will assess charges for its review to determine the applicability of other exemptions not previously considered.

(e) *How does HUD handle multiple requests?* If you, or others acting with you, make multiple requests at or about the same time for the purpose of dividing one request into a series of requests for the purpose of evading the assessment of fees, HUD will aggregate your requests for records. In no case will HUD give you more than the first two hours of search time, or more than the first 100 pages of duplication without charge.

(f) *Unsuccessful searches.* If HUD's search for records is unsuccessful, HUD will still bill you for the search.

(g) *No charge for costs under $25.* HUD will not charge you a fee if the total amount calculated under this section is less than $25.00.

(h) *Reducing fees in the public interest.* If HUD determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information for your own commercial interests, HUD may waive or reduce the fee.

(i) *When do I pay the fee?* HUD will bill you when it responds to your request. You must pay within thirty-one calendar days. If the fee is more than $250.00 or you have a history of failing to pay FOIA fees in a timely manner, HUD will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *What happens if I do not pay the fees?* (1) If you do not pay by the thirty-first day after the billing date, HUD will charge interest at the maximum rate allowed under 31 U.S.C. 3717.

(2) If you do not pay the amount due within ninety calendar days of the due date, HUD may notify consumer credit reporting agencies of your delinquency.

(3) If you owe fees for previous FOIA responses, HUD will not respond to further requests unless you pay the amount due.

(k) *Contract services.* HUD will contract with private sector sources to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient method. When doing so HUD will charge the cost to the requester that the private sector source has charged HUD for performing these tasks. In some instances, these costs may be higher than the charges HUD would ordinarily charge if the processing tasks had been done by the agency itself. In no case will HUD contract out responsibilities which the FOIA provides that HUD alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. HUD will ensure that, when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the National Technical Information Service, HUD will inform requesters of the steps necessary to obtain records from those sources. Information provided routinely in the normal course of business will be provided at no charge.

§ 15.111 How do I appeal a denial of my request for records or a fee determination?

(a) *To what address do I submit my appeals?* You must submit your appeal, in writing, to the address specified in HUD's notice responding to your FOIA request (see § 15.106(a)(2)(iv)). If you send your appeal to the wrong HUD office, that office will forward it to the correct office. That office will also notify you that it has so forwarded your appeal and advise you that, for processing purposes, the time of receipt will be when the appropriate office receives your appeal.

(b) *How much time do I have to submit an appeal?* Your written appeal must be postmarked within 30 calendar days of the date of the HUD determination from which you are appealing. If your appeal is transmitted by other than the United States Postal Service (i.e., facsimile, messenger or delivery service) it must be received in the appropriate office by close of business on the 30th calendar day after the date of the HUD determination.

(c) *What information must I provide if I am appealing a denial of request for information?* If you are appealing a denial of your request for information, the appeal must contain the following information:

(1) A copy of your original request;

(2) A copy of the written denial of your request; and

(3) Your statement of the facts and legal arguments supporting disclosure.

(d) *What information must I provide if I am appealing a fee determination?* If you are appealing a fee determination, including a denial of your request for HUD to waive the fee, the appeal must contain the following information:

(1) The address of the office which made the fee determination from which you are appealing;

(2) The fee that office charged;

(3) The fee, if any, you believe should have been charged;

(4) The reasons you believe that your fee should be lower than the fee which the Agency charged or should have been waived; and

(5) A copy of the initial fee determination and copies of any correspondence concerning the fee.

(e) *What information must I provide if I am appealing a denial of expedited processing?* If you are appealing a denial of your request for expedited processing, your appeal must contain the following information:

(1) A copy of your original request;

(2) A copy of the written denial of your request; and

(3) Your statement of the facts and legal arguments supporting expedited processing.

§ 15.112 How will HUD respond to my appeal?

(a) *How much time does HUD have to decide my appeal?* HUD will decide your appeal of a denial of expedited processing within 10 working days after its receipt. For any other type of appeal, HUD will decide your appeal within 20 working days after its receipt. HUD may have an additional 10 working days if unusual circumstances require.

(b) *What action will HUD take if it grants my appeal?*

(1) *Appeal of a denial of request for information.* If you are appealing a decision to deny your request for records, HUD will either:

(i) Give you the records you requested or advise you that the records will be provided by the originating office;

(ii) Give you some of the records you requested while declining to give you other records you requested, tell you why HUD has concluded that the documents were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision; or

(iii) Decline to give you the records you requested, tell you why HUD has concluded that the records were exempt from disclosure under FOIA, and tell you how to obtain judicial review of HUD's decision.

(2) *Appeal of a fee determination.* If you are appealing a fee determination, HUD will either:

(i) Waive the fee or charge the fee that you have requested;

(ii) Modify the original fee charged, and explain why it has determined that the modified fee is appropriate; or

(iii) Advise you that the original fee charged was appropriate, and explain why it has determined that the fee is appropriate.

(3) *Appeal of a denial of expedited processing.* If you are appealing a denial of your request for expedited processing, HUD will either:

(i) Agree to expedited processing of your request; or

(ii) Advise you that the decision to deny expedited processing has been affirmed, and tell you how to obtain judicial review of HUD's decision.

Subparts C, D, E, F, G, and J [Removed]

5. Remove subparts C, D, E, F, G, and J.

6. Redesignate subpart H, consisting of §§ 15.71 through 15.74, as subpart C, consisting of §§ 15.201 through 15.204, to read as follows:

Subpart C—Production In Response to Subpoenas or Demands of Courts or Other Authorities

Sec.
15.201 Purpose and scope.
15.202 Production or disclosure prohibited unless approved by the Secretary.
15.203 Procedure in the event of a demand for production or disclosure.
15.204 Procedure in the event of an adverse ruling.

7. In newly designated § 15.201, the undesignated paragraph is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 15.201 Purpose and scope.

* * * * *

(b) The term ''legal proceeding'' has the meaning given in § 15.301(b).

§ 15.203 [Amended]

8. In newly designated § 15.203(a), revise the reference to ''§ 15.71'' to read ''§ 15.201''.

§ 15.204 [Amended]

9. In newly designated § 15.204, revise the reference to ''§ 15.73(b)'' to read ''§ 15.203(b)''.

§§ 15.81 through 15.85 [Redesignated as §§ 15.301 through §§ 15.305]

10. Redesignate subpart I, consisting of §§ 15.81 through 15.85, as subpart D, consisting of §§ 15.301 through 15.305, to read as follows:

Subpart D—Testimony of Employees in Legal Proceedings

Sec.
15.301 Purpose.
15.302 Testimony in proceedings in which the United States is a party.
15.303 Legal proceedings among private litigants; general rule.
15.304 Legal proceedings among private litigants; subpoenas.
15.305 Legal proceedings among private litigants; expert or opinion testimony.

§ 15.304 [Amended]

11. In newly designated § 15.304, revise the reference to ''§§ 15.71–15.74'' to read ''§§ 15.201 through 15.204''.

12. Add appendix A to part 15 to read as follows:

Appendix A to Part 15

HUD FOIA Reading Rooms

The Department maintains a reading room in Headquarters, 451 Seventh Street, SW., Washington, DC 20410 and in each of its Secretary's Representative's Offices as follows:

New England, Boston Office—Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092. The New England Office oversees jurisdiction for HUD Offices located in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.

New York/New Jersey, New York Office—26 Federal Plaza, New York, New York 10278–0068. The New York/New Jersey Office oversees jurisdiction for HUD Offices located in New York and New Jersey.

Mid Atlantic, Philadelphia Office—Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392. The Mid Atlantic Office oversees jurisdiction for HUD Offices located in Pennsylvania, Delaware, Maryland, Virginia, and West Virginia.

Southeast/Caribbean, Atlanta Office—Five Points Plaza Building, 40 Marietta St., Atlanta, Georgia 30303. The Southeast/Caribbean Office oversees jurisdiction for HUD Offices located in Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Florida, and Puerto Rico.

Midwest, Chicago Office—Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. The Midwest Office oversees jurisdiction for HUD Offices located in Illinois, Indiana, Ohio, Michigan, Wisconsin, and Minnesota.

Southwest, Fort Worth Office—Burnett Plaza Building, 801 Cherry Street, Fort Worth, Texas 76102. The Southwest Office oversees jurisdiction for HUD Offices located in Oklahoma, Texas, Arkansas, Louisiana, and New Mexico.

Great Plains, Kansas City Office—Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406. The Great Plains Office oversees jurisdiction for HUD Offices located in Missouri, Iowa, Kansas, and Nebraska.

Rocky Mountain, Denver Office—633 17th Street, Denver, Colorado 80202–3607. The Rocky Mountain Office oversees jurisdiction for HUD Offices located in Colorado, Utah, Wyoming, North Dakota, South Dakota, and Montana.

Pacific/Hawaii, San Francisco Office—Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, PO Box 36003, San Francisco, California 94102–3448. The Pacific/Hawaii Office oversees jurisdiction for HUD Offices located in California, Nevada, Arizona, and Hawaii.

Northwest/Alaska, Seattle Office—Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000. The Northwest/Alaska Office oversees jurisdiction for HUD Offices located in Alaska, Washington, Oregon, and Idaho.

Dated: January 9, 2001.

Andrew Cuomo,

Secretary.

[FR Doc. 01–1397 Filed 1–19–01; 8:45 am]

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Federal Register

Monday,

January 22, 2001

Part VIII

Environmental Protection Agency

40 CFR Parts 9, 141, and 142

National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141 and 142

[WH–FRL–6934–9]

RIN 2040–AB75

National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is establishing a health-based, non-enforceable Maximum Contaminant Level Goal (MCLG) for arsenic of zero and an enforceable Maximum Contaminant Level (MCL) for arsenic of 0.01 mg/L (10 µg/L). This regulation will apply to non-transient non-community water systems, which are not presently subject to standards on arsenic in drinking water, and to community water systems.

In addition, EPA is publishing clarifications for monitoring and demonstration of compliance for new systems or sources of drinking water. The Agency is also clarifying compliance for State-determined monitoring after exceedances for inorganic, volatile organic, and synthetic organic contaminants. Finally, EPA is recognizing the State-specified time period and sampling frequency for new public water systems and systems using a new source of water to demonstrate compliance with drinking water regulations. The requirement for new systems and new source monitoring will be effective for inorganic, volatile organic, and synthetic organic contaminants.

DATES: This rule is effective March 23, 2001, except for the amendments to §§ 141.23(i)(1), 141.23(i)(2), 141.24(f)(15), 141.24(h)(11), 141.24(h)(20), 142.16(e), 142.16(j), and 142.16(k) which are effective January 22, 2004.

The compliance date for requirements related to the clarification for monitoring and compliance under §§ 141.23(i)(1), 141.23(i)(2), 141.24(f)(15), 141.24(f)(22), 141.24(h)(11), 141.24(h)(20), 142.16(e), 142.16(j), and 142.16(k) is January 22, 2004. The compliance date for requirements related to the revised arsenic standard under §§ 141.23(i)(4), 141.23(k)(3), 141.23(k)(3)(ii), 141.51(b), 141.62(b), 141.62(b)(16), 141.62(c), 141.62(d), and 142.62(b) is January 23, 2006. For purposes of judicial review, this rule is promulgated as of January 22, 2001.

ADDRESSES: Copies of the public comments received, EPA responses, and all other supporting documents are available for review at the U.S. EPA Water Docket (4101), East Tower B–57, 401 M Street, SW, Washington DC 20460. For an appointment to review the docket, call 202–260–3027 between 9 a.m. and 3:30 p.m. and refer to Docket W–99–16.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, phone: (800) 426–4791, or (703) 285–1093, e-mail: hotline.sdwa@epa.gov for general information about, and copies of, this document and the proposed rule. For technical inquiries, contact: Jeff Kempic, (202) 260–9567, e-mail: kempic.jeffrey@epa.gov for treatment and costs, and Dr. John B. Bennett, (202) 260–0446, e-mail: bennett.johnb@epa.gov for benefits.

SUPPLEMENTARY INFORMATION:

Regulated Entities

A public water system (PWS), as defined in 40 CFR 141.2, provides water to the public for human consumption through pipes or ''other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year.'' A public water system is either a community water system (CWS) or a non-community water system (NCWS). A community water system, as defined in § 141.2, is ''a public water system which serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five year-round residents.'' The definition in § 141.2 for a non-transient non-community water system (NTNCWS) is ''a public water system that is not a [CWS] and that regularly serves at least 25 of the same persons over 6 months per year.'' EPA has an inventory totaling over 54,000 community water systems and approximately 20,000 non-transient non-community water systems nationwide. Entities potentially regulated by this action are community water systems and non-transient non-community water systems. The following table provides examples of the regulated entities under this rule.

TABLE OF REGULATED ENTITIES

Category	Examples of regulated entities
Industry	Privately owned/operated community water supply systems using ground water, surface water, or mixed ground water and surface water.
State, Tribal, and Local Government.	State, Tribal, or local government-owned/operated water supply systems using ground water, surface water, or mixed ground and surface water.
Federal Government	Federally owned/operated community water supply systems using ground water, surface water, or mixed ground water and surface water.

The table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.11 and 141.62 of the rule. If you have any questions regarding the applicability of this action to a particular entity, consult the general information contact listed in the section listing contacts for further information.

Abbreviations used in this rule

<—less than
≤—less than or equal to
>—greater than
≥—greater than or equal to
±—plus or minus
§—section
σ—σ, Greek letter, in statistics represents standard deviation
µg—Microgram, one-millionth of a gram (3.5×10^{-8} of an ounce)
µg/L—micrograms per liter
AA—Activated alumina
AIC—Akaike Information Criterion
ACWA—Association of California Water Agencies
AMWA—Association of Metropolitan Water Agencies
APHA—American Public Health Association

ARARs—Applicable or relevant and appropriate requirements
As (III)—Trivalent arsenic. Common inorganic form in water is arsenite
As (V)—Pentavalent arsenic. Common inorganic form in water is arsenate
ASDWA— Association of State Drinking Water Administrators
AsH_3—Arsine
ASTM—American Society for Testing and Materials
ATSDR—Agency for Toxic Substances and Disease Registry, U.S. Department of Health & Human Services
AWWA—American Water Works Association
AWWARF—American Water Works Association Research Foundation
BAT—Best available technology
BV—Bed volume
CCR—Consumer Confidence Report
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act administered by EPA for hazardous substances
C/F—Modified coagulation/filtration
CFR—Code of Federal Regulations
CSFII—Continuing Survey of Food Intakes by Individuals
CWA—Clean Water Act administered by EPA for surface waters of the U.S.
CWS—Community water system
CWSS—Community Water System Survey
DMA—Dimethyl arsinic acid, cacodylic acid, $(CH_3)_2HAsO_2$
DNA—Deoxyribonucleic acid
DWSRF—Drinking Water State Revolving Fund
EA—Economic analysis
EDR—Electrodialysis reversal
EEAC—Environmental Economics Advisory Committee
e.g.—*exempli gratia,* Latin for ''for example''
EPA—U.S. Environmental Protection Agency
et al.—*et alia,* Latin for ''and others''
FACA—Federal Advisory Committee Act
FR—Federal Register
FRFA—Final Regulatory Flexibility Analysis
FSIS—Federalism Summary Impact Statement
GDP—Gross Domestic Product
GFAA—Graphite furnace atomic absorption
GHAA—Gaseous hydride atomic absorption
GI—Gastrointestinal
GW—Ground water
GWR—Ground Water Rule
HRRCA—Health Risk Reduction and Cost Analysis
ICP–AES—Inductively coupled plasma-atomic emission spectroscopy
ICP–MS—Inductively coupled plasma mass spectroscopy
ICR—Information collection request
i.e.—*id est,* Latin for ''that is''
IOCs—Inorganic contaminants
ISCV—Intra-system coefficient of variation
IX—Ion exchange
L—Liter, also referred to as lower case ''l'' in older citations
LD_{50}—The dose of a chemical taken by mouth or absorbed by the skin which is expected to cause death in 50% of the test animals
LS—Modified lime softening
LT1/FBR—Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Recycling Rule
MCL—Maximum contaminant level
MCLG—Maximum contaminant level goal
MDL—Method detection limit
mg—Milligrams, one-thousandth of a gram, 1 milligram=1,000 micrograms
mg/kg—Milligrams arsenic per kilogram body weight or soil weight
mg/L—Milligrams per liter
MHI—Mean household income
MMA—Monomethyl arsenic, arsonic acid, $CH_3H_2ASO_3$
NAOS—National Arsenic Occurrence Survey
NAS—National Academy of Sciences
NAWQA—National Ambient Water Quality Assessment, USGS
NCI—National Cancer Institute
NCWS—Non-community water system
NDWAC—National Drinking Water Advisory Council for EPA
NIRS—National Inorganic and Radionuclide Survey done by EPA
NODA—Notice of Data Availability
NOMS—National Organic Monitoring Survey done by EPA
NPDES—National Pollutant Discharge Elimination System for CWA
NPDWR—National primary drinking water regulation
NR—Not reported
NRC—National Research Council, the operating arm of NAS
NTNCWS—Non-transient non-community water system
NTTAA—National Technology Transfer and Advancement Act
NWIS—National Water Information System of USGS
OGWDW—Office of Ground Water and Drinking Water in EPA
OMB—Office of Management and Budget
PE—Performance evaluation, studies to certify laboratories for EPA drinking water testing
pH—Negative log of hydrogen ion concentration
PNR—Public Notification Rule
POE—Point-of-entry treatment devices
POTWs—Publicly owned treatment works, treat wastewater
POU—Point-of-use treatment devices
ppb—Parts per billion
ppm—Parts per million
PQL—Practical quantitation level
PRA—Paperwork Reduction Act
psi—Pounds per square inch
PT—Performance testing
PUC—Public utilities commission
PWS—Public water systems
QALYs—Quality adjusted life years
RCRA—Resource Conservation and Recovery Act
REF—Relative exposure factors
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis
RO—Reverse osmosis
RUS—Rural Utilities Service
RWS—Rural Water Survey
SAB—Science Advisory Board
SBAR—Small Business Advocacy Review
SBREFA—Small Business Regulatory Enforcement Fairness Act
SD—Standard deviation
SDWA—Safe Drinking Water Act
SDWIS—Safe Drinking Water Information System
SEER—Surveillance, Epidemiology, and End Results
SM—Standard Method for Examination of Water and Wastewater
SMF—Standardized monitoring framework
SMRs—Standardized mortality ratios
SO4—Sulfate
SOCs—Synthetic organic contaminants
STP–GFAA—Stabilized temperature platform graphite furnace atomic absorption
SW—Surface water
TBLLs—Technically based local limits
TC—Toxicity Characteristic, RCRA hazardous waste
TCLP—Toxicity Characteristic Leaching Procedure, tests for hazardous waste
TDS—Total dissolved solids
TMF—Technical, managerial, financial capacity
TOC—Total organic carbon
UMRA—Unfunded Mandates Reform Act
URTH—Unreasonable risk to health
U.S.—United States
USDA—US Department of Agriculture
USGS—US Geological Survey
UV—Ultraviolet
VOCs—Volatile organic contaminants
VSL—Value of statistical life
VSLY—Value of statistical life year
WHO—World Health Organization
WS—Water supply
WTP—Willingness-to-pay

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I. Background and Summary of the Final Rule

A. What Did EPA Propose?

On June 22, 2000, the **Federal Register** published EPA's proposed arsenic regulation for community water systems and non-transient non-community water systems (65 FR 38888; EPA, 2000i). EPA proposed a health-based, non-enforceable goal, or Maximum Contaminant Level Goal (MCLG), of zero micrograms per liter (μg/L) and a Maximum Contaminant Level (MCL) of 5 μg/L. The Agency also requested comment on alternate MCL levels of 3 μg/L, 10 μg/L, and 20 μg/L. (In the proposed rule EPA expressed arsenic concentration in milligrams per liter (mg/L) or parts per million, which matches the units of the former and current standard for arsenic. Except as noted, the Agency will refer to arsenic concentration in micrograms per liter (μg/L) in this preamble.)

EPA based the June 2000 proposal on extensive analysis including a careful consideration of the following issues: a nonzero MCLG; occurrence of arsenic in public water systems; our approach for estimating national occurrence and co-occurrence; acceptance limits used to establish the practical quantitation level (PQL); rounding of measured values for compliance purposes; extending compliance by two years for systems serving under 10,000 people in order to add capital improvements; dates for reporting changes in the consumer confidence reports and public notification; appropriateness of the national affordability criteria; affordable technologies for small systems; implementation issues for point-of-use (POU) and point-of-entry (POE) treatments; appropriateness of non-hazardous residual costing; our overall analysis of costs; adjusting benefits estimates (*e.g.*, for factors such as latency); our approach for considering uncertainties that affected risk; use of the authority to set an MCL at a level other than the feasible MCL; expression of the MCL as total arsenic; approaches to regulation of NTNCWSs; State program revisions; selenium levels as an attenuation factor in arsenic toxicity; impacts on small entities; use of consensus analytical methods; methods to address environmental justice concerns; and comments on use of plain

language. We asked commenters to submit data and comments on these issues, as well as any other issues raised in the proposal.

The proposal reflected several types of technical evaluations, including analytical methods performance and laboratory capacity; the likelihood of different size water systems choosing treatment technologies based on source water characteristics; and the national occurrence of arsenic in drinking water supplies. Furthermore, the Agency assessed the quantifiable and nonquantifiable costs and health risk reduction benefits likely to occur at the treatment levels considered, and the effects of arsenic on sensitive subpopulations.

The proposed MCL was consistent with the Agency's use of the new benefit/cost provisions of the Safe Drinking Water Act (SDWA), as amended in 1996 (see section II. of this preamble for additional information about this provision). EPA proposed 3 µg/L as the feasible MCL, after considering treatment costs and efficiency under field conditions as well as considering the appropriate analytical methods. Because EPA determined that the benefits of regulating arsenic at the feasible level would not justify the costs, the Agency proposed an MCL of 5 µg/L, while requesting comment on MCL options of 3 µg/L (the feasible level), 10 µg/L, and 20 µg/L.

We based our estimates of large system compliance costs primarily on costs for coagulation/filtration and lime softening, although we consider several other technologies to be appropriate as best available technology (BAT) technologies. (See Table I.F–1.) For small-system (systems serving 10,000 people and less) compliance costs, we considered the costs for ion exchange, activated alumina, reverse osmosis, and nanofiltration. EPA proposed extending the effective date to five years after the final rule issuance for small community water systems and maintaining the effective date at three years after promulgation for all other community water systems. EPA proposed that States applying to adopt the revised arsenic MCL may use their most recently approved monitoring and waiver plans or note in their primacy application any revisions to those plans. EPA proposed that NTNCWSs monitor for arsenic and report exceedances of the MCL.

The Agency also clarified the procedure used for determining compliance after exceedances for inorganic, volatile organic, and synthetic organic contaminants in §§ 141.23(i)(2), 141.24(f)(15)(ii), and 141.24(h)(11)(ii), respectively. Finally, EPA proposed that new systems and systems using a new source of water be required to demonstrate compliance with the MCLs using State-specified time frames. The clarified new source and new system compliance regulations require that States establish initial sampling frequencies and compliance periods for inorganic, volatile organic, and synthetic organic contaminants in §§ 141.23(c)(9), 141.24(f)(22), and 141.24(h)(20), respectively.

B. Overview of the Notice of Data Availability (NODA)

In the proposed rule, EPA quantified the risk reduction and benefits of avoiding bladder cancer and noted that a peer-reviewed quantification of lung cancer risk from arsenic exposure would probably be available in time to consider for the final rule (65 FR 38888 at 38899; EPA, 2000i). Relying upon a discussion in the National Research Council (NRC) report (NRC, 1999, pg. 8) about the qualitative risks of lung cancer (65 FR 38888 at 38944; 2000i), EPA provided a ''What-If'' estimate of lung cancer benefits (65 FR 38888 at 38946, 2000i) in the proposed rule. On October 20, 2000, the **Federal Register** published EPA's Notice of Data Availability (NODA) containing a revised risk analysis for bladder cancer and new risk information concerning lung cancer (65 FR 63027; EPA, 2000m), and identified a correction to Table 4 on October 27, 2000 (65 FR 64479; EPA, 2000n). The NODA also provided information concerning the availability of cost curves used to develop the costs published in the proposal.

EPA used new risk information for lung and bladder cancer from a peer-reviewed article written by Morales *et al.* (2000). In the NODA, EPA explained that the authors used several alternative statistical models to estimate cancer risk. EPA explained its reasons for selecting ''Model 1'' with no comparison population for further analysis. We used daily water consumption (EPA, 2000c) reported by gender, region, age, economic status, race, and separately for pregnant women, lactating women, and women in childbearing years combined with weight data to derive exposure factors for the U.S. We used these exposure factors, our occurrence estimate (EPA 2000g) of populations exposed to arsenic at different concentrations, and the risk distributions from the Morales *et al.* (2000) paper in Monte Carlo simulations to estimate the upper bound of risks faced by the U.S. population. The NODA compared the bladder cancer risks derived for the proposal against the bladder cancer risks derived from the Morales *et al.* (2000) study. EPA also derived lung cancer risks using the same approach and the risk model contained in the Morales *et al.* (2000) study.

EPA also used the newly calculated risks to estimate a lower bound risk in the U.S. This calculation took into account the amount of additional arsenic people in Taiwan were likely to have ingested from water used in food preparation. EPA showed the effects on risks for the U.S. population at both the mean and 90th percentile levels for various arsenic levels in drinking water. Based on the revised risk assessment, we updated our assessment of the relative risk of lung cancer as compared to bladder cancer. The NODA indicated that instead of being 2 to 5 times as many fatal lung cancer cases as bladder cancer cases (as was cited in NRC's Executive Summary, NRC, 1999, pg. 8 as a qualitative estimate), the combined risk of excess lung and bladder cancer were thought to be only about twice that of bladder cancer risk. EPA noted that, while the new risks were higher than the bladder cancer risk in the proposal, the monetized benefits of lung cancer would fall within the lung cancer benefits range estimated using the ''What-If'' analysis (*e.g.*, $19.6 million—$224 million yearly for an MCL of 10 µg/L) in the proposal (65 FR 38888 at 38959; EPA, 2000m).

In the NODA, EPA also explained that the docket for the proposed rule had the November 1999 version (EPA, 1999o) of ''Technologies and Costs for the Removal of Arsenic from Drinking Water'' rather than the April 1999 version of the document that was the primary source for the treatment technology cost equations used to generate the national cost estimate. The national cost estimate was presented in the ''Proposed Arsenic in Drinking Water Rule Regulatory Impact Analysis'' (EPA, 2000h). The NODA therefore announced the availability of the ''Technologies and Costs for the Removal of Arsenic from Drinking Water,'' dated April 1999 (EPA,1999b). The NODA also noted that commenters interested in reproducing the waste disposal curves should consult the ''Small Water System Byproducts Treatment and Disposal Cost Document'' (EPA, 1993a) and ''Water System Byproducts Treatment and Disposal Document (EPA, 1993b).'' In addition to placing these documents in the docket, the NODA also specified that an electronic copy of the treatment technology and waste disposal equations used in the development of the RIA could be found in the docket.

EPA made the April 1999 version of the document, ''Technologies and Costs for the Removal of Arsenic from Drinking Water'' (EPA,1999b) available on its arsenic webpage.

The cost methodology and cost estimates were clearly stated and explained in the proposal for public review and consideration. Through a technical oversight, we incorrectly attributed the source for the cost curves to the November version of the document placed in the docket (EPA, 1999o). As a result, people could not replicate the precise analysis we did, should a commenter desire to do so. More specifically, although the inputs, assumptions, and model methodology were clearly explained, we incorrectly cited the sources of an intermediate step of deriving specific cost curves from those assumptions. Based upon the proposal's detailed discussion of inputs, assumptions and associated methodology, EPA believes the public was fully able to review, understand, and comment on the Agency's estimate of potential impacts. EPA discusses the cost curves further in section III.E.1 of this preamble.

C. Does This Regulation Apply to My Water System?

The final regulation on arsenic in drinking water promulgated today applies to all CWSs and NTNCWSs. The regulation not only establishes an MCLG and MCL for arsenic, but also lists feasible technologies and affordable technologies for small systems that can be used to comply with the MCL. However, systems are not required to use the listed technologies in order to meet the MCL.

D. What are the Final Drinking Water Regulatory Standards for Arsenic (Maximum Contaminant Level Goals and Maximum Contaminant Levels)?

In today's rule, the MCLG is 0 µg/L, and the enforceable MCL is 0.01 mg/L, which is the same as 10 micrograms per liter (µg/L) or 10 parts per billion (ppb). EPA based the MCL on total arsenic, because drinking water contains almost entirely inorganic forms, and the analytical methods for total arsenic are readily available and capable of being performed by certified laboratories at an affordable cost.

E. Will There be a Health Advisory?

A health advisory for arsenic is not part of today's rulemaking. EPA will be considering whether or not to issue a health advisory after evaluating the recommendations of the Science Advisory Board (SAB) (EPA, 2000q). The purpose of an advisory would be to provide useful information to water providers between issuance and implementation of this rule.

F. What are the Best Available Technologies For Removing Arsenic From Drinking Water?

Section 1412(b)(4)(E) of the Safe Drinking Water Act states that each National Primary Drinking Water Regulation (NPDWR) which establishes an MCL shall list the technology, treatment techniques, and other means that the Administrator finds to be feasible for purposes of meeting the MCL. Technologies are judged to be a best available technology (BAT) when the following criteria are satisfactorily met:

(1) The capability of a high removal efficiency;

(2) A history of full-scale operation;

(3) General geographic applicability;

(4) Reasonable cost based on large and metropolitan water systems;

(5) Reasonable service life;

(6) Compatibility with other water treatment processes; and

(7) The ability to bring all of the water in a system into compliance.

EPA identified BATs in this section using the listed criteria. Their removal efficiencies and a brief discussion of the major issues surrounding the usage of each technology are also given in this section. More details about the treatment technologies and costs can be found in ''Technologies and Costs for the Removal of Arsenic From Drinking Water'' (EPA, 2000t).

1. BAT technologies

EPA reviewed several technologies as BAT candidates for arsenic removal, e.g., ion exchange, activated alumina, reverse osmosis, nanofiltration, electrodialysis reversal, coagulation assisted microfiltration, modified coagulation/filtration, modified lime softening, greensand filtration, conventional iron and manganese removal, and several emerging technologies. The Agency determined that, of the technologies capable of removing arsenic from source water, only the technologies in Table I.F–1 fulfill the requirements of SDWA for BAT determinations for arsenic. The maximum percent of arsenic removal that can be reasonably obtained from these technologies is also shown in the table. These removal efficiencies are for arsenic (V) removal.

TABLE I.F–1.— BEST AVAILABLE TECHNOLOGIES AND REMOVAL RATES

Treatment Technology	Maximum Percent Removal [1]
Ion Exchange (sulfate ≤ 50 mg/L)	95
Activated Alumina	95
Reverse Osmosis	>95
Modified Coagulation/Filtration	95
Modified Lime Softening (pH > 10.5)	90
Electrodialysis Reversal	85
Oxidation/Filtration (20:1 iron:arsenic)	80

[1] The percent removal figures are for arsenic (V) removal. Pre-oxidation may be required.

2. Preoxidation

In water, the most common valence states of arsenic are As (V), or arsenate, and As (III), or arsenite. As (V) is more prevalent in aerobic surface waters and As (III) is more likely to occur in anaerobic ground waters. In the pH range of 4 to 10, As (V) species ($H_2AsO_4^{-}$ and $H_2AsO_4^{2-}$) are negatively charged, and the predominant As (III) compound (H_3AsO_3) is neutral in charge. Removal efficiencies for As (V) are much better than removal of As (III) by any of the technologies evaluated because the arsenate species carry a negative charge and arsenite is neutral under these pH conditions. To increase the removal efficiency when As (III) is present, pre-oxidation to the As (V) species is necessary.

As (III) may be converted through pre-oxidation to As (V) using one of several oxidants. Data on oxidants indicate that chlorine, potassium permanganate, and ozone are effective in oxidizing As (III) to As (V). Pre-oxidation with chlorine may create undesirable concentrations of disinfection byproducts and membrane fouling of subsequent treatments such as reverse osmosis. EPA has completed research on the chemical oxidants for As (III) conversion, and is presently investigating ultraviolet light disinfection technology (UV) and solid oxidizing media. For POU and POE devices, central chlorination may be required for oxidation of As (III).

3. Factors affecting listing technologies

Ion Exchange (IX) can effectively remove arsenic using anion exchange resins. It is recommended as a BAT primarily for sites with low sulfate because sulfate is preferred over arsenic. Sulfate will compete for binding sites resulting in shorter run lengths. Due to much shorter run lengths than activated alumina, anion exchange must be

regenerated because it is not cost effective to dispose of the resin after one use. Column bed regeneration frequency is a key factor in the cost of the process and affects the volume of waste produced by the process. The proposed rule preamble noted that anion exchange may be practical up to approximately 120 mg/L of sulfate (Clifford, 1994). The upper-bound sulfate concentration for the final rule is 50 mg/L. The selection of this upper bound is based on several factors, including cost and the ability to dispose of the brine stream.

The proposed rule listed three mechanisms to dispose of the brine stream used for regeneration. The options were: sanitary sewer, evaporation pond, and chemical precipitation. Many comments on the proposed rule were based on the assumption that the waste streams generated would be considered hazardous waste. Waste streams containing less than 0.5% solids are evaluated against the toxicity characteristic directly to determine if the waste is hazardous. Arsenic in the regeneration brine will likely exceed 5 mg/L for most systems with arsenic above 10 µg/L and sulfate below 50 mg/L. Since the brine stream would likely be considered hazardous, EPA eliminated the evaporation pond and the chemical precipitation options from the decision tree as options for disposal of anion exchange wastes. The Agency retained discharge to a sanitary sewer because domestic sewage and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works (POTW) for treatment is excluded from consideration as solid waste (40 CFR 261.4). Domestic sewage means untreated sanitary wastes that pass through a sewage system. Discharges meeting the previously stated criteria are excluded from regulation as hazardous waste. However, these assumptions were reviewed to substantially reduce projections of brine wastes going to POTWs from those that were used in support of the proposed rule.

Discharge to a sanitary sewer can be limited by technically based local limits (TBLLs) for arsenic or total dissolved solids. Since anion exchange is regenerated more frequently than activated alumina, the total dissolved solids increase can be significant. Many comments indicated that significant increases in total dissolved solids would be unacceptable, especially in the Southwest where water resources are scarce. Salt is used for regeneration of anion exchange resins. The upper bound of 50 mg/L sulfate for anion exchange is based on projected increases of total dissolved solids using the quantity of salt needed for regeneration and the frequency of regeneration (based on sulfate). The sulfate upper bound for the final rule is significantly lower than the upper bound from the proposed rule. Due to the potential for an increase in total dissolved solids, anion exchange would be favored in areas other than the Southwest where the volume of brine is very small relative to the total volume of wastewater being treated at the POTW. Systems that need to treat only a few entry points or can blend a significant portion of the water to meet the MCL may produce a smaller brine stream to allow the brine to be discharged to a POTW. Water systems should check with the POTW to ensure that the brine stream will be accepted before selecting this option.

Activated Alumina (AA) is an effective arsenic removal technology; however, the capacity of activated alumina to remove arsenic is very pH sensitive. High removals can be achieved over a broad range of pH, but shorter run lengths will be observed at higher pH. Activated alumina can be operated in one of two ways. The activated alumina can either be disposed of or regenerated after the media is exhausted. Under the regeneration option, strong acids and bases are used to remove arsenic from the media so that it can be used again to remove arsenic. Because arsenic is strongly adsorbed to the media, only about 50–70% of the adsorbed arsenic is removed. The brine stream produced by the regeneration process then requires disposal. The proposed rule listed discharge to a sanitary sewer as the disposal mechanism for the brines. Many comments on the proposed rule noted that TBLLs for arsenic or total dissolved solids might restrict discharge of brine streams to the sanitary sewer. Since activated alumina run lengths (i.e., number of bed volumes (BV) per run) are much longer than anion exchange, the arsenic concentrations in the brine stream would likely be much higher. Regeneration of activated alumina media is not recommended for larger systems because: (1) Disposal of the brine may be difficult, (2) the regeneration process is incomplete which reduces subsequent run lengths, and (3) for most systems it will be cheaper to replace the media rather than regenerate it. The option of replacing the spent media with new media is called disposable activated alumina.

The disposable activated alumina option can be operated both at the optimal pH of 6 and at higher natural water pH values. It is expected that larger systems would adjust pH to take advantage of the longer run lengths. EPA developed several disposable activated alumina options for the final rule. Two options were based on operating the process at the natural pH of the water (no pH adjustment). These options are intended primarily for smaller systems, although larger systems may also be able to operate at the natural pH if it is low enough to get sufficiently long run lengths. Two options where the pH was adjusted to pH 6 were also examined. The longer run length is based on using sulfuric acid to lower the pH. However, sulfate can compete for adsorption sites with arsenic. It was recommended that hydrochloric acid be used to obtain a longer run length (Clifford et al., 1998). When pH is adjusted to pH 6, post-treatment corrosion control will be necessary.

In our analysis, we assumed that spent media could be safely disposed of in a non-hazardous landfill. The preamble to the proposed rule described results from testing of activated alumina media used to remove arsenic in drinking water systems with arsenic above 50 µg/L. The results from the Toxicity Characteristic Leaching Procedure (TCLP) on these samples was typically less that 50 µg/L. The current toxicity characteristic (TC) regulatory level for designating arsenic as a hazardous waste under the Resource Conservation and Recovery Act (RCRA) is 5 mg/L (5000 µg/L) and is listed in 40 CFR 261.24(a). The TC regulatory level is one hundred times higher than the results from the activated alumina samples.

Reverse Osmosis (RO) can provide removal efficiencies of greater than 95% when operating pressure is ideal. Water rejection (on the order of 20–25%) may be an issue in water-scarce regions and may prompt systems employing RO to seek greater levels of water recovery. Water recovery is the volume of drinking water produced by the process divided by the influent stream (product water/influent stream). Increased water recovery is often more expensive, since it can involve recycling of water through treatment units to allow more efficient separation of solids from water. This can also produce more concentrated solid wastes. However, the waste stream will generally not be as concentrated as anion exchange brines, so it should be easier to dispose of. Based on the cost of the process, it is unlikely that reverse osmosis would be installed solely for arsenic removal. Blending a treated portion with an untreated portion and

still meeting the MCL would make reverse osmosis more cost effective. If blending is not an option, post-treatment corrosion control would be necessary. Since a large portion of the water is wasted, water quantity could be an issue, especially in the Western U.S. It should be noted that while reverse osmosis is listed as a BAT, it was not used to develop national costs because other options are more cost effective and have much smaller waste streams.

Modified Coagulation/Filtration (C/F) is an effective treatment process for removal of As (V) according to laboratory, pilot-plant, and full-scale tests. The type of coagulant and dosage used affects the efficiency of the process. Below a pH of approximately 7, removals with alum or ferric sulfate/chloride are similar. Above a pH of 7, removals with alum decrease dramatically (at a pH of 7.8, alum removal efficiency is about 40%). Other coagulants are also less effective than ferric sulfate/chloride. Systems may need to lower pH or add more coagulant to achieve higher removals.

Modified Lime Softening (LS), operated within the optimum pH range of greater than 10.5 is likely to provide a high percentage of As removal. Systems operating lime softening at lower pH will need to increase the pH to achieve higher removals of arsenic.

Coagulation/Filtration and Lime Softening are unlikely to be installed solely for arsenic removal. Systems considering installation of one of these technologies should design the process to operate in the optimal pH range if high removal efficiencies are needed for compliance.

Electrodialysis Reversal (EDR) can produce effluent water quality comparable to reverse osmosis. EDR systems are fully automated, require little operator attention, and do not require chemical addition. EDR systems, however, are typically more expensive than nanofiltration and reverse osmosis systems. These systems are often used in treating brackish water to make it suitable for drinking. This technology has also been applied in the industry for wastewater recovery and typically operates at a recovery of 70 to 80%. Since a large portion of the water is wasted, water quantity could be an issue, especially in the Western U.S. It should be noted that while electrodialysis reversal is listed as a BAT, it was not used to develop national costs because other options are more cost effective and have much smaller waste streams.

Oxidation/Filtration (including greensand filtration) has an advantage in that there is not as much competition with other ions. Arsenic is co-precipitated with the iron during iron removal. Sufficient iron needs to be present to achieve high arsenic removals. One study recommended a 20:1 iron to arsenic ratio (Subramanian et al., 1997). Removals of approximately 80% were achieved when iron to arsenic ratio was 20:1. When the iron to arsenic ratio was lower (7:1), removals decreased below 50%. The presence of iron in the source water is critical for arsenic removal. If the source water does not contain iron, oxidizing and filtering the water will not remove arsenic. When the arsenic is present as As(III), sufficient contact time needs to be provided to convert the As(III) to As(V) for removal by the oxidation/filtration process. An additional pre-oxidation step is not required for this process as long as there is sufficient contact time. In developing national cost estimates, EPA assumed that systems would opt for this type of technology only if more than 300 µg/L of iron was present. The Agency assumed a removal percentage of 50% when estimating national costs because the 20:1 ratio could not be verified due to limitations in the co-occurrence database. However, EPA assumed a removal percentage of 80% as part of a sensitivity analysis. At proposal EPA indicated that oxidation filtration was not being listed as BAT because it has a low removal efficiency, which might not be appropriate for an MCL of 5. However, the Agency also noted that this technology may be appropriate for systems that do not require high arsenic removal and had high iron in their source water. Because this is an inexpensive technology that is particularly effective for high-iron, low-arsenic waters, EPA is listing oxidation/filtration as a BAT with a footnote that the iron-to-arsenic ratio must be at least 20:1. Systems with greater than 300 µg/L of iron will also see benefits in the aesthetic quality of the water as the iron can be reduced below the secondary standard. EPA's inclusion of oxidation/filtration as a BAT in today's final rule is based upon further evaluation of all available information and studies as well as on public comments.

4. Other technologies evaluated, but not designated as BAT

Coagulation Assisted Microfiltration. The coagulation process described previously can be linked with microfiltration to remove arsenic. The microfiltration step essentially takes the place of a conventional gravity filter. The University of Houston recently completed pilot studies at Albuquerque, New Mexico on iron coagulation followed by a direct microfiltration system. The results of this study indicated that iron coagulation followed by microfiltration is capable of removing arsenic (V) from water to yield concentrations that are consistently below 2 µg/L. Critical operating parameters are iron dose, mixing energy, detention time, and pH (Clifford, 1997). Coagulation and microfiltration as separate processes have both been installed full scale, but the combined coagulation/microfiltration process does not have a full-scale operation history. Since a full-scale operation history is one of the requirements to list a technology as a BAT, it is not presently being listed as one. It could be designated as such in the future if the technology meets that requirement. EPA used this option in developing the national cost estimate because we believe coagulation/microfiltration is an appropriate technology that will be used by certain water systems to comply with this rule, even though it is not currently listed as BAT for the reasons mentioned.

Granular ferric hydroxide is a technology that may combine very long run length without the need to adjust pH. The technology has been demonstrated for arsenic removal full scale in England (Simms et al., 2000). A pilot-scale study for activated alumina was also conducted on that water and showed run lengths much longer than observed in pilot-scale studies in the United States. Due to the lack of published data showing performance for a range of water qualities, granular ferric hydroxide was not designated a BAT. In addition, there is little published information on the cost of the media, so it is difficult to evaluate cost. Granular ferric hydroxide is being investigated in several ongoing studies and may be an effective technology for removing arsenic. Systems may wish to investigate it and other adsorption technologies such as modified activated alumina and other iron-based media. Many of these other new adsorptive media are also being investigated in several ongoing studies.

5. Waste disposal

Waste disposal will be an important issue for both large and small drinking water plants. Costs for waste disposal have been added to the costs of the treatment technologies (in addition to any pre-oxidation and corrosion control costs), and form part of the treatment trains that are listed in Tables I.G–1, I.G–5, and I.G–6.

The preamble to the proposed rule summarized toxicity characteristic leaching procedure (TCLP) data on residuals from different arsenic removal

technologies. The arsenic concentrations in TCLP extracts from alum coagulation, activated alumina, lime softening, iron/manganese removal, and coagulation-microfiltration residuals were below 0.05 mg/L, which is two orders of magnitude lower than the current TC regulatory level. The TCLP data for iron coagulation were mixed—the residuals from an arsenic removal plant were below 0.05 mg/L, but the residuals from another iron coagulation plant were above 1 mg/L. However, this is still below the TC regulatory level of 5 mg/L. Based on these data, EPA does not believe that drinking water treatment plant residuals would be classified as hazardous waste. The TCLP data also indicate that most residuals could meet a much lower TC regulatory level. Options where the brine stream could be hazardous were eliminated from the final decision tree. For the purposes of the national cost estimate, it was assumed that solid residuals would be disposed of at nonhazardous landfills.

G. Treatment Trains Considered For Small Systems

1. Can my water system use point-of-use (POU), point-of-entry (POE), or bottled water to comply with this regulation?

Section 1412(b)(4)(E)(ii) of SDWA, as amended in 1996, requires EPA to issue a list of technologies that achieve compliance with MCLs established under the Act that are affordable and applicable to typical small drinking water systems. These small public water systems categories are: (1) population of more than 25 but less than or equal to 500; (2) population of more than 500, but less than or equal to 3,300; and (3) population of more than 3,300, but less than or equal to 10,000. Owners and operators may choose any technology or technique that best suits their conditions, as long as the MCL is met.

The technologies examined for BAT determinations were also evaluated as small system compliance technologies. Several other alternatives that are solely small system options were also evaluated as compliance technologies. Central treatment is not the only option available to small systems. One of the provisions included in the SDWA Amendments of 1996 allows the use of POU and POE devices as compliance technologies for small systems. SDWA stipulates that POU/POE treatment systems:

> shall be owned, controlled and maintained by the public water system or by a person under contract with the public water system to ensure proper operation and maintenance and compliance with the MCL or treatment technique and equipped with mechanical warnings to ensure that customers are automatically notified of operational problems (§ 1412(b)(4)(E)).

Whole-house, or POE treatment, is necessary when exposure to the contaminant by modes other than consumption is a concern; this is not the case with arsenic. Single faucet, or POU treatment, is preferred when treated water is needed only for drinking and cooking purposes. POU devices are especially applicable for systems that have a large flow and only a minor part of that flow directed for potable use such as at many NTNCWSs. POE/POU options include reverse osmosis, activated alumina, and ion exchange processes. POU systems are easily installed and can be easily operated and maintained. In addition, these systems generally offer lower capital costs and may reduce engineering, legal, and other fees associated with centralized treatment options. However, there will be higher administrative costs associated with POU and POE options. For POU options, the trade-off is lower treatment cost since only 1% of the water is treated, but higher administrative and monitoring costs occur. Centrally managed POU options, even with the higher monitoring and administrative costs, are less expensive than central treatment for populations up to 150 to 250 people depending upon the technology and number of households.

Using POU/POE devices introduces some new issues. Adopting a POU/POE treatment system in a small community requires more record-keeping to monitor individual devices than does central treatment. POU/POE systems may require special regulations regarding customer responsibilities as well as water utility responsibilities. The water system or person under contract to the system is responsible for maintaining the devices in customers' homes. This responsibility cannot be delegated to the customer. Use of POU/POE systems does not reduce the need for a well-maintained water distribution system. Increased monitoring may be necessary to ensure that the treatment units are operating properly. Monitoring POU/POE systems is also more complex because compliance samples need to be taken after each POU or POE unit rather than at the entry point to the distribution system to be reflective of treatment.

EPA examined three technologies as POU and POE devices for the proposed rule. EPA assumed that systems would more likely choose to use POU activated alumina (AA) or reverse osmosis (RO), and POE AA in the proposed rule. POU and POE ion exchange (IX) and POE RO were considered, but not included as compliance technologies in the proposed rule. Activated alumina and ion exchange units face a breakthrough issue. If the activated alumina is not replaced on time, there is a potential for significantly reduced arsenic removal. However, if the anion exchange resin is not replaced or regenerated on time, the previously removed arsenic can be driven off the resin by sulfate. Tap water arsenic concentrations can be higher than the source water. This is called chromatographic peaking. Due to the potential for chromatographic peaking and run lengths that would typically be less than six months, anion exchange was not listed as a compliance technology in the proposed rule. POE ion exchange also may present problems with total dissolved solids since the resin would need to be regenerated. Since all sites within the system would need treatment, the total dissolved solids increase from a centrally managed POE ion exchange system would be similar to that from a central treatment ion exchange system. EPA did not list POE RO units as compliance technologies because it could create corrosion control problems. In addition, water recovery would be no higher than central treatment, so water quantity issues associated with central treatment reverse osmosis would be applicable to POE RO.

The proposed rule included POE AA as a small system compliance technology. Arsenic removal by AA is very sensitive to the pH. The finished water pH will typically be higher than the optimal pH of 6 to meet the corrosion control requirements of the lead and copper rule. A finished water pH for many systems would be in the range of pH 7 to pH 8. Using data on activated alumina run length and pH, it was determined that viable run lengths were likely only when the finished water pH was at or below pH 7.5 (Kempic, 2000). Even in this pH range, the media may need to be replaced more frequently than once a year, which would make the option very expensive especially compared to the POU AA option. The run length data used for this analysis were from a site with very little competing ions (Simms and Azizian, 1997). Studies at other sites with higher levels of competing ions have much lower run lengths (Clifford et al., 1998). Based on the limited finished water pH range where POE AA might be effective and the fact that the POU media needs replacing much less frequently due to lower water demand, POE AA has not been listed as a compliance technology

in the final rule. POE devices utilizing media that are less sensitive to pH adjustment may be listed as compliance technologies in the future once data on their performance are generated.

The effect of pH was also examined on POU AA. Under the POU AA option, the volume of water requiring treatment is much smaller. The unit will be installed at the kitchen tap and only the water being used for cooking and consumption is being treated for arsenic removal. Since the ratio of the daily volume of water being treated to the size of the unit is much smaller, POU units can be operated for longer periods of time before the media needs to be replaced. The replacement frequency assumed for the costs is every six months. Viable run lengths for the POU option were greater than one year up to pH 8 (Kempic, 2000). This analysis assumed a large daily usage volume of 24 liters per day. The average consumption per person per day is just over 1 liter. Even if competing ions reduced the run length significantly, systems with tap water at or below pH 8 should meet the MCL of 10 µg/L using a six-month replacement frequency for the media. POU AA is a compliance technology when the tap water pH is at or below pH 8.

POU RO was listed as a compliance technology in the proposed rule and it is being listed as a compliance technology in the final rule as well. Several comments indicated that water rejection would be an issue with POU devices. Since only about 1% of the total water used in the household is being treated, POU RO is unlikely to create water quantity problems. If the water rejection rate was 10:1, this would only increase the total household water demand by about 10 percent. Where availability of additional water is limited, systems may want to consider other alternatives to meet the MCL.

In order to be consistent with 1996 SDWA Amendments, EPA issued a **Federal Register** notice on June 11, 1998 (EPA, 1998f) that deleted the prohibition on the use of POU devices as compliance technologies. This prohibition was in 40 CFR 141.101. This section now states that public water systems shall not use bottled water to achieve compliance with an MCL. Bottled water may be used on a temporary basis to avoid unreasonable risk to health. Therefore, bottled water cannot be used as a compliance technology for the arsenic rule.

Likely treatment trains are shown in Table I.G–1. These trains represent a wide variety of solutions, including BATs, that small systems may consider when complying with the proposed arsenic MCL. Not all solutions may be viable for a given system. For example, only those systems with coagulation/filtration in place will be able to modify their existing treatment system. The treatment trains include BATs, waste disposal, and when necessary, pre-oxidation and corrosion control. While systems could install lime softening at pH > 10.5 or optimized coagulation/filtration solely for arsenic removal, EPA does not view this as a likely option. Reverse osmosis and electrodialysis reversal are also not included in this table because other options are more cost effective for arsenic removal and do not reject a large volume of water like these two technologies. RO and EDR may be cost-effective options if removal of other contaminants is needed and water quantity is not a concern.

TABLE I.G–1.— TREATMENT TECHNOLOGY TRAINS FOR CONSIDERATION BY SMALL SYSTEMS IN COMPLYING WITH FINAL RULE INCLUDING BATS

Train #	Treatment Technology Trains for Consideration by Small Systems
1	Add pre-oxidation [if not in-place] and modify in-place Lime Softening (pH > 10.5) and modify corrosion control.
2	Add pre-oxidation [if not in-place] and modify in-place Coagulation/Filtration and modify corrosion control.
3	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal. Sulfate level ≤ 20 mg/L.
4	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal. Sulfate level: 20 mg/L < sulfate ≤ 50 mg/L.
5	Add pre-oxidation [if not in-place] and add Coagulation Assisted Microfiltration with corrosion control and add mechanical dewatering/non-hazardous landfill waste disposal.
6	Add pre-oxidation [if not in-place] and add Coagulation Assisted Microfiltration with corrosion control and add non-mechanical dewatering/non-hazardous landfill waste disposal.
7	Add Oxidation/Filtration (Greensand) (20:1 iron: arsenic) and add POTW for backwash stream.
8	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH 7 ≤ pH < pH 8.
9	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH 8 ≤ pH ≤ pH 8.3.
10	Add pre-oxidation [if not in-place] and add Activated Alumina with pH adjustment (to pH 6) and corrosion control and add non-hazardous landfill (for spent media) waste disposal. Run length = 23,100 BV.
11	Add pre-oxidation [if not in-place] and add Activated Alumina with pH adjustment (to pH 6) and corrosion control and add non-hazardous landfill (for spent media) waste disposal. Run length = 15,400 BV.
12	Add pre-oxidation [if not in-place] and add POU Reverse Osmosis.
13	Add pre-oxidation [if not in-place] and add POU Activated Alumina. (Finished water pH ≤ pH 8.0)

Pre-oxidation costs are given as a separate component because they will be incurred only by some systems. In estimating national costs, it was assumed that only systems without pre-oxidation in place would need to add the necessary equipment. It is expected that no surface water systems will need to install pre-oxidation for arsenic removal and that fewer than 50% of the ground water systems may need to install pre-oxidation for arsenic removal. Ground water systems without pre-oxidation should ascertain if pre-oxidation is necessary by determining if the arsenic is present as As (III) or As (V). Ground water systems with predominantly As (V) will probably not need pre-oxidation to meet the MCL.

2. What are the affordable treatment technologies for small systems?

The 13 treatment trains listed in Table I.G–1 were compared against the national-level affordability criteria to determine the affordable treatment trains. The Agency's national-level affordability criteria were published in the August 6, 1998 **Federal Register** (EPA, 1998h). In this notice, EPA discussed the procedure for affordable

treatment technology determinations for the contaminants regulated before 1996.

The preamble to the proposed arsenic rule described the derivation of the national-level affordability criteria (65 FR 38888 at 38926; EPA, 2000i). A very brief summary follows: First an ''affordability threshold'' (*i.e.*, the total annual household water bill that would be considered affordable) was calculated. The total annual water bill includes costs associated with water treatment, water distribution, and operation of the water system. In developing the threshold of 2.5% median household income, EPA considered the percentage of median household income spent by an average household on comparable goods and services and on cost comparisons with other risk reduction activities for drinking water such as households purchasing bottled water or a home treatment device. The complete rationale for EPA's selection of 2.5% as the affordability threshold is described in ''Variance Technology Findings for Contaminants Regulated Before 1996'' (EPA, 1998l).

The Variance Technology Findings document also describes the derivation of the baselines for median household income, annual water bills, and annual household consumption. Data from the Community Water System Survey (CWSS) were used to derive the annual water bills and annual water consumption values for each of the three small system size categories. The Community Water System Survey data on zip codes were used with the 1990 Census data on median household income to develop the median household income values for each of the three small-system size categories. The median household-income values used for the affordable technology determinations are not based on the national median income. The value for each size category is a national median income for communities served by small water systems within that range. Table I.G–2 presents the baseline values for each of the three small-system size categories. Annual water bills and median household income are based on 1995 estimates.

TABLE I.G–2.—BASELINE VALUES FOR SMALL SYSTEMS CATEGORIES

System size category (population served)	Annual household consumption (1000 gallons/yr)	Annual water bills ($/yr)	Median household income ($)
25–500	72	$211	$30,785
501–3,300	74	184	27,058
3,300–10,000	77	181	27,641

For each size category, the threshold value was determined by multiplying the median household income by 2.5%. The annual household water bills were subtracted from this value to obtain the available expenditure margin. Projected treatment costs will be compared against the available expenditure margin to determine if there are affordable compliance technologies for each size category. The available expenditure margin for the three size categories is presented in Table I.G–3.

TABLE I.G–3.—AVAILABLE EXPENDITURE MARGIN FOR AFFORDABLE TECHNOLOGY DETERMINATIONS

System size category (population served)	Available expenditure margin ($/household/year)
25–500	559
501–3,300	492
3,301–10,000	510

The size categories specified in SDWA for affordable technology determinations are different than the size categories typically used by EPA in the Economic Analysis. A weighted average procedure was used to derive design and average flows for the 25–500 category using design and average flows from the 25–100 and 101–500 categories. A similar approach was used to derive design and average flows from the 501–1000 and 1001–3300 categories for the 501–3300 category. The Variance Technology Findings document (EPA, 1998l) describes this procedure in more detail. Table I.G–4 lists the design and average flows for the three size categories.

TABLE I.G–4.— DESIGN AND AVERAGE DAILY FLOWS USED FOR AFFORDABLE TECHNOLOGY DETERMINATIONS

System size category (population served)	Design flow (mgd)	Average flow (mgd)
25–500	0.058	0.015
501–3,300	0.50	0.17
3,301–10,000	1.8	0.70

Capital and operating and maintenance costs were derived for each treatment train using the flows listed previously and the cost equations in the Technology and Cost Document. Several conservative assumptions were made to derive the costs. The influent arsenic concentration was assumed to be 50 µg/L, which was the MCL for arsenic prior to this rule. The treatment target was 8 µg/L, which is 80% of the MCL. Thus, little blending could be performed to reduce costs. Capital costs were amortized using the 7% interest rate preferred by OMB for benefit-cost analyses of government programs and regulations rather than a 3% interest rate.

The annual system treatment cost in dollars per year was converted into a rate increase using the average daily flow. The annual water consumption values listed in Table I.G–2 were multiplied by 1.15 to account for water lost due to leaks. Since the water lost to leaks is not billed, the water bills for the actual water used were adjusted to cover this lost water by increasing the household consumption. The rate increase in dollars per thousand gallons used was multiplied by the adjusted annual consumption to determine the annual cost increase for the household for each treatment train. Several comments on affordability presented household cost increases that were

derived by dividing the annual system cost by the number of households. That is an inappropriate method because residential customers would not only be paying for the water that they use, but also all the water used by non-residential customers of the system..

Of the 13 treatment trains in Table I.G–1, the ones identified in Table I.G–5 are deemed to be affordable for systems serving 25–500 people as the annual household cost was below the available expenditure margin. The two trains using coagulation-assisted microfiltration are not affordable for this size category. All 13 treatment trains are deemed to be affordable for systems serving 501–3,300 and 3,301–10,000 people and are presented in Table I.G–6. Centralized compliance treatment technologies include ion exchange, activated alumina, modified coagulation/filtration, modified lime softening, and oxidation/filtration (e.g. greensand filtration) for source waters high in iron. In addition, POU and POE devices are also compliance technology options for the smaller systems.

TABLE I.G–5.— AFFORDABLE COMPLIANCE TECHNOLOGY TRAINS FOR SMALL SYSTEMS WITH POPULATION 25–500

Train No.	Treatment Technology Trains
1	Add pre-oxidation [if not in-place] and modify in-place Lime Softening (pH > 10.5) and modify corrosion control.
2	Add pre-oxidation [if not in-place] and modify in-place Coagulation/Filtration and modify corrosion control.
3	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal. Sulfate level ≤ 20 mg/L.
4	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal. Sulfate level: 20 mg/L < sulfate ≤ 50 mg/l.
7	Add Oxidation/Filtration (Greensand) (20:1 iron: arsenic) and add POTW for backwash stream.
8	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH 7 ≤pH < pH 8.
9	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH 8 ≤ pH ≤ pH 8.3.
10	Add pre-oxidation [if not in-place] and add Activated Alumina with pH adjustment (to pH 6) and corrosion control and add non-hazardous landfill (for spent media) waste disposal. Run length = 23,100 BV.
11	Add pre-oxidation [if not in-place] and add Activated Alumina with pH adjustment (to pH 6) and corrosion control and add non-hazardous landfill (for spent media) waste disposal. Run length = 15,400 BV.
12	Add pre-oxidation [if not in-place] and add POU Reverse Osmosis.
13	Add pre-oxidation [if not in-place] and add POU Activated Alumina. (Finished water pH ≤ pH 8.0)

TABLE I.G–6.— AFFORDABLE COMPLIANCE TECHNOLOGY TRAINS FOR SMALL SYSTEMS WITH POPULATIONS 501–3,300 AND 3,301 TO 10,000

Train No.	Treatment Technology Trains
1	Add pre-oxidation [if not in-place] and modify in-place Lime Softening (pH > 10.5) and modify corrosion control.
2	Add pre-oxidation [if not in-place] and modify in-place Coagulation/Filtration and modify corrosion control.
3	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal. Sulfate level ≤ 20 mg/L.
4	Add pre-oxidation [if not in-place] and add Anion Exchange and add POTW waste disposal. Sulfate level: 20 mg/L < sulfate ≤ 50 mg/l.
5	Add pre-oxidation [if not in-place] and add Coagulation Assisted Microfiltration with corrosion control and add mechanical dewatering/non-hazardous landfill waste disposal.
6	Add pre-oxidation [if not in-place] and add Coagulation Assisted Microfiltration with corrosion control and add non-mechanical dewatering/non-hazardous landfill waste disposal.
7	Add Oxidation/Filtration (Greensand) (20:1 iron: arsenic) and add POTW for backwash stream.
8	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH 7 ≤pH < pH 8.
9	Add pre-oxidation [if not in-place] and add Activated Alumina and add non-hazardous landfill (for spent media) waste disposal. pH 8 ≤ pH ≤ pH 8.3.
10	Add pre-oxidation [if not in-place] and add Activated Alumina with pH adjustment (to pH 6) and corrosion control and add non-hazardous landfill (for spent media) waste disposal. Run length = 23,100 BV.
11	Add pre-oxidation [if not in-place] and add Activated Alumina with pH adjustment (to pH 6) and corrosion control and add non-hazardous landfill (for spent media) waste disposal. Run length = 15,400 BV.
12	Add pre-oxidation [if not in-place] and add POU Reverse Osmosis.
13	Add pre-oxidation [if not in-place] and add POU Activated Alumina. (Finished water pH ≤ pH 8.0)

3. Can My Water System Get a Small System Variance From an MCL Under Today's Rule?

Section 1415(e)(1) of SDWA allows States to grant variances to small water systems (i.e., systems having 10,000 customers or less) in lieu of complying with an MCL if EPA determines that there are no nationally affordable compliance technologies for that system size/water quality combination. The system must then install an EPA-listed variance treatment technology (section 1412(b)(15)) that makes progress toward the MCL, if not necessarily reaching it. EPA has determined that affordable technologies exist for all three system size categories and has therefore not identified a variance technology for any system size or source water quality combination. Small system variances are not available for the final arsenic MCL.

H. Can My System Get a General Variance or Exemption From the MCL Under Today's Rule?

General variances may be granted in accordance with section 1415(a)(1)(A) of SDWA and EPA's regulations. General variances are available to public water systems that have installed or agree to install the BAT but, due to source water quality, are or will be unable to comply with the national primary drinking water standard. The general variance

provisions of SDWA are narrowly focused on addressing those rare circumstances where some unusual characteristic of the source water available to a system will result in less effective performance of the BAT. Exemptions may be granted in accordance with section 1416(a) of SDWA and EPA's regulations. Exemptions are designed to provide a system facing compelling circumstances, such as economic hardship, additional time to come into compliance.

Under section 1415(a)(1)(A) of the SDWA, a State that has primary enforcement responsibility (primacy), or EPA as the primacy agency, may grant variances from MCLs to those public water systems of any size that cannot comply with the MCLs because of characteristics of the water sources. The primacy agency may grant general variances to a system on condition that the system install the best available technology, treatment techniques, or other means, and provided that alternative sources of water are not reasonably available to the system. At the time this type of variance is granted, the State must prescribe a schedule for compliance with its terms and may require the system to implement additional control measures. Furthermore, before EPA or the State may grant a general variance, it must find that the variance will not result in an unreasonable risk to health (URTH) to the public served by the public water system.

Under section 1413(a)(4), States that choose to issue general variances must do so under conditions, and in a manner, that are no less stringent than section 1415. Of course, a State may adopt standards that are more stringent than the EPA's standards. EPA specifies BATs for general variance purposes. EPA may identify as BAT different treatments under section 1415 for variances other than the BAT under section 1412 for MCLs. The BAT findings for section 1415 may vary depending on a number of factors, including the number of persons served by the public water system, physical conditions related to engineering feasibility, and the costs of compliance with MCLs. In this final rule, EPA is not specifying different BAT for variances under section 1415(a).

Under section 1416(a), EPA or a State may exempt a public water system from any requirements related to an MCL or treatment technique of an NPDWR if it finds that: (1) Due to compelling factors (which may include a variety of ''compelling'' factors, including economic factors such as qualification of the PWS as serving a disadvantaged community), the PWS is unable to comply with the requirement or implement measure to develop an alternative source of water supply; (2) the exemption will not result in an URTH; (3) the PWS was in operation on the effective date of the NPWDR, or for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to the new system; and (4) management or restructuring changes (or both) cannot reasonably result in compliance with the Act or improve the quality of drinking water.

If EPA or the State grants an exemption to a public water system, it must at the same time prescribe a schedule for compliance (including increments of progress or measures to develop an alternative source of water supply) and implementation of appropriate control measures that the State requires the system to meet while the exemption is in effect. Under section 1416(b)(2)(A), the schedule prescribed shall require compliance as expeditiously as practicable (to be determined by the State), but no later than 3 years after the compliance date for the regulations established pursuant to section 1412(b)(10). For public water systems serving 3,300 people or less and needing financial assistance for the necessary improvements, EPA or the State may renew an exemption for one or more additional two-year periods, but not to exceed a total of six years, if the system establishes that it is taking all practicable steps to meet certain requirements specified in the statute. Thus, the maximum possible duration of a small systems exemption is nine years beyond the 5-year compliance schedule specified in today's rule.

A public water system shall not be granted an exemption unless it can establish that either: (1) The system cannot meet the standard without capital improvements that cannot be completed prior to the date established pursuant to section 1412(b)(10); (2) in the case of a system that needs financial assistance for the necessary implementation, the system has entered into an agreement to obtain financial assistance pursuant to section 1452 or any other Federal or State program; or (3) the system has entered into an enforceable agreement to become part of a regional public water system.

EPA believes that exemptions will be an important tool to help States address the number of systems needing financial assistance to achieve compliance with the arsenic rule (and other rules) with the available supply of financial assistance. About 2,300 CWSs and about 1,100 NTNCWSs will need to install treatment to achieve compliance with today's final rule. CWSs and not-for-profit NTNCWSs are eligible for assistance from the Drinking Water State Revolving Fund (DWSRF). Between its inception in Federal Fiscal Year 1997 and June 2000, the DWSRF program has provided assistance to about 1,100 systems. Given the many competing demands being placed on financial assistance programs, the ability to extend the period of time available for a system to receive financial assistance will provide important flexibility for States and systems. Exemptions provide an opportunity to extend the period of time during which a system can achieve compliance, thus providing needy systems with additional time to qualify for financial assistance. Under today's action, all systems have 5 years to achieve compliance. Exemptions for an additional 3 years can be made available to qualified systems. For those qualified systems serving 3,300 persons or less, up to 3 additional 2-year extensions to the exemption are possible, for a total exemption duration of 9 years. When added to the 5 years provided for compliance by the rule, this allows up to 14 years for small systems serving up to 3,300 people to achieve compliance.

EPA will issue guidance in the near future on considerations involved in granting exemptions under the arsenic rule, including making findings of no URTH where exemptions are offered.

I. What Analytical Methods are Approved for Compliance Monitoring of Arsenic and What are the Performance Testing Criteria for Laboratory Certification?

1. Approved Analytical Methods

Today's rule lists four analytical technologies that are approved for compliance determinations of arsenic at the MCL of 0.01 mg/L (see Table I.I–1). As noted in the June 22, 2000 proposed rule (65 FR 38888, EPA, 2000i), the methods listed in Table I.I–1 are the same analytical technologies that were approved for arsenic when the MCL was 0.05 mg/L, with the exception of the methods that use Inductively Coupled Plasma Atomic Emission Spectroscopy (ICP–AES) measurement technology. EPA is withdrawing two ICP–AES methods (EPA Method 200.7 and SM 3120B) because their detection limits (0.008 mg/L and 0.050 mg/L respectively) are too high to reliably determine compliance with an MCL of 0.01 mg/L. In the June 2000 proposed rule, EPA noted that the ICP–AES methods were rarely used to obtain laboratory certification when analyzing

low level challenge samples for arsenic. Therefore, we believe withdrawal of the availability of the ICP–AES methods for compliance determinations of arsenic in drinking water will not affect laboratory capacity. EPA did not receive any adverse comment on the proposal to withdraw approval of these two methods, and today's final rule amends the CFR to effect this withdrawal.

TABLE I.I–1.—APPROVED ANALYTICAL METHODS (40 CFR 141.23) FOR ARSENIC AT THE MCL OF 0.01 MG/L

Methodology	Reference method
Inductively Coupled Plasma Mass Spectroscopy (ICP–MS)	200.8 (EPA)
Stabilized Temperature Platform Graphite Furnace Atomic Absorption (STP–GFAA)	200.9 (EPA)
Graphite Furnace Atomic Absorption (GFAA)	3113B (SM) D–2972–93C (ASTM)
Gaseous Hydride Atomic Absorption (GHAA)	3114B (SM) D–2972–93B (ASTM)

2. Performance Testing Criteria for Laboratory Certification

For purposes of drinking water laboratory certification, the Agency specifies pass/fail (acceptance) limits for a successful analysis of the required annual challenge sample, i.e., a performance evaluation (PE) or performance testing (PT) sample. These acceptance limits have been historically derived using one of two different approaches:

(a) Variable acceptance limits uniquely derived for each PE study from a regression analysis of the performance of all laboratories that participate in that PE-study, or

(b) Fixed acceptance limits derived from a regression analysis of the laboratory PE sample analysis results in several PE studies.

Variable acceptance limits are analogous to ''grading on a curve'' which means that the pass/fail limit can vary from PE study to study depending on the quality and experience of the laboratories participating in the study. These limits are specified in the CFR as plus or minus two sigma (2) where sigma is the standard deviation of the analytical results reported in the PE study. EPA specifies variable acceptance limits when a method or measurement technology is new enough that an insufficient number of experienced laboratories have participated in the PE studies or when only a few PE studies have been conducted.

EPA prefers the fixed acceptance limits approach because it is the better indicator of laboratory performance averaged over time and several different concentrations of the target analyte. Fixed limits also provide the same pass/fail benchmark in each PE study. As discussed in the proposed rule, EPA has a large base of PE-study data from which to derive a practical quantitation limit (PQL) and a fixed PE-study acceptance limit for arsenic. Thus, as proposed in the June 2000 rule, today's final rule amends § 141.23(k)(3)(ii) to specify an acceptance limit of ±30% in PE (now known as PT) samples spiked with arsenic at the PQL of 0.003 mg/L or greater. For a brief discussion of the derivation of the PQL for arsenic, see section III.B.1, What is the feasible level?

J. How Will I Know if My System Meets the Arsenic Standard?

This section summarizes changes to the arsenic monitoring and compliance determination requirements. The Agency is also changing the methods used by a system to determine if it is in violation of an MCL for all of the regulated inorganic contaminants (IOCs), synthetic organic contaminants (SOCs), and volatile organic contaminants (VOCs). See section I.J.3. for more information regarding violation determinations.

1. Sampling Points and Grandfathering of Monitoring Data

In today's rule, the Agency is moving the requirements associated with arsenic into § 141.23(c) making it consistent with the requirements for IOCs regulated under the standardized monitoring framework. All CWS and NTNCWSs must monitor for arsenic at each entry point to the distribution system. In some cases, § 142.11(1) allows States to establish regulations that ''vary from comparable regulations set forth in part 141 of this chapter, and demonstrate that any different State regulation is at least as stringent as the comparable regulation contained in part 141.'' Using this authority, States may allow systems to collect samples at an alternative location (e.g., the first point of drinking water consumption in the distribution system) if the State justifies in its primacy program that the alternative location is equally or more protective. States could implement the change in sampling location once the primacy package is approved.

The MCL compliance elements of the rule become effective in 2006. Some ground water systems will collect samples to comply with the sampling requirements for all regulated IOCs (including arsenic) in 2005 in accordance with the State monitoring plan. This sampling event will satisfy the monitoring requirements for the 2005–2007 compliance period, but the revised arsenic MCL will not become effective until 2006. Ground water systems may use grandfathered data collected after January 1, 2005 to satisfy the sampling requirements for the 2005–2007 compliance period. The grandfathered data must report results from analytical methods approved for use by this final rule (e.g., the method detection limit must be substantially less than the revised MCL of 10 µg/L). Data collected using unacceptably high detection levels (e.g. using ICP–AES technology) will not be eligible for grandfathering. If the grandfathered data are used to comply with the 2005–2007 compliance period and the analytical result is greater than 10 µg/L, that system will be in violation of the revised MCL on the effective date of the rule. If systems do not use grandfathered data, then surface water systems must collect a sample by December 31, 2006 and ground water systems must collect a sample by December 31, 2007 to demonstrate compliance with the revised MCL.

2. Compositing of Samples

Compositing of samples is allowed under the standardized monitoring framework. The States that allow compositing of samples use the methodology in the Phase II/V regulations as specified in § 141.23(a)(4). In today's rule, CWSs and NTNCWSs will still be allowed to composite samples; however, if arsenic is detected above one-fifth of the revised MCL (2 µg/L), then a follow-up sample must be taken within 14 days at each sampling point included in the composite as described in § 141.23(a)(4). Compliance determinations must be based on the follow up sample result. Water systems may composite samples (temporally and spatially) until a

contaminant (arsenic or any other contaminant regulated in the Phase II/V regulations) is detected. Once a contaminant has been detected in a composited sample at concentrations greater than one-fifth of the MCL, the system(s) must discontinue the practice of compositing samples for all future monitoring.

3. Calculation of Violations

In today's rule, the Agency is clarifying the compliance determination section for the IOCs (including arsenic), the SOCs, and the VOCs in §§ 141.23(i), 141.24(f)(15), and 141.24(h)(11), respectively.

Systems will determine compliance based on the analytical result(s) obtained at each sampling point. If any sampling point is in violation of an MCL, the system is in violation. For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. Systems monitoring annually or less frequently whose sample result exceeds the MCL for any inorganic contaminant in § 141.23(c), or whose sample results exceeds the trigger level for any organic contaminant listed in § 141.24(f) or § 141.24(h), must revert to quarterly sampling for that contaminant the next quarter. Systems are only required to conduct quarterly monitoring at the entry point to the distribution system at which the sample was collected and for the specific contaminant that triggered the system into the increased monitoring frequency. Systems triggered into increased monitoring will not be considered in violation of the MCL until they have completed one year of quarterly sampling. If any sample result will cause the running annual average to exceed the MCL at any sampling point (i.e., the analytical result is greater than four times the MCL), the system is out of compliance with the MCL immediately. Systems may not monitor more frequently than specified by the State to determine compliance unless they have applied to and obtained approval from the State. If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running annual average of the samples collected. If a sample result is less than the method detection limit, zero will be used to calculate the annual average. States have the discretion to delete results of obvious sampling or analytic errors.

States still have the flexibility to require confirmation samples for positive or negative results. States may require more than one confirmation sample to determine the average exposure over a 3-month period. Confirmation samples must be averaged with the original analytical result to calculate an average over the 3-month period. The 3-month average must be used as one of the quarterly concentrations for determining the running annual average. The running annual average must be used for compliance determinations.

The rule requires that monitoring be conducted at all entry points to the distribution system. However, the State has discretion to require monitoring and determine compliance based on a case-by-case analysis of individual drinking water systems. The Agency cannot address all of the possible outcomes that may occur at a particular water system; therefore, EPA encourages drinking water systems to inform State regulators of their individual circumstances. Some systems have implemented elaborate plans including targeted, increased monitoring that is more representative of the average annual contaminant concentration to which individuals are being exposed (some States use a time-weighted or flow-weighted averaging approach to determine compliance).

Some States require that systems collect samples from wells that only operate for one month out of the year regardless of whether they are operating during scheduled sampling times. The State may determine compliance based on several factors including, but not limited to, the quantity of water supplied by a source, the duration of service of the source, and contaminant concentration.

4. Monitoring and Compliance Schedule

Systems must begin complying with the clarified monitoring and compliance determination provisions of today's rule effective January 22, 2004 for inorganic, volatile organic, and synthetic organic contaminants. These requirements clarify that for §§ 141.23(i)(2), 141.24(f)(15)(ii), and 141.24(h)(11)(ii) compliance will be determined based on the running annual average of the initial MCL exceedance and any subsequent State-required confirmation samples. In addition, the clarifications address calculation of compliance when a system fails to collect the required number of samples. Compliance (determined by the average concentration) will be based on the total number of samples collected. Some systems have purposely not collected the required number of quarterly samples and only incurred monitoring and reporting violations for the uncollected samples. Any systems that avoid required sampling will calculate MCL violations by dividing the summed samples by the actual number of samples taken. This clarification did not change §§ 141.23(i)(1) and 141.24(h)(11)(i) which allow systems to use zero for all non-detects when calculating MCL violations. In addition, if any one sample would cause the annual average to be exceeded, the system is out of compliance immediately.

Also in today's rule, the Agency is moving the arsenic monitoring and compliance requirements from §§ 141.23(l) to (q) to the standardized monitoring framework in § 141.23 for other IOCs. States may grant systems nine-year monitoring waivers using the conditions in § 141.23(c) for arsenic. The criteria for developing a State waiver program were published in the Phase II/V rules, and as noted in section IV.B. of this rule, the Agency is not modifying the waiver criteria in today's rulemaking. However, the revised arsenic rule is not effective until January 23, 2006 (see section I.M. for a more detailed discussion regarding the effective date of the rule.). States and utilities supported moving arsenic into the standardized monitoring framework.

To use compliance data after the effective date of the 10 μg/L MCL, systems must use an approved method with a method detection limit substantially less than the revised arsenic MCL of 10 μg/L. This means that after December 31, 2006 and December 31, 2007 all surface water systems and groundwater systems, respectively, may not use analytical methods using the ICP–AES technology, because the detection limits for these methods are 8 μg/L or higher. This restriction means that two ICP–AES methods that were approved when the MCL was 50 μg/L may not be used for compliance determinations at the revised MCL of 10 μg/L. The two methods are EPA Method 200.7 and SM 3120B. Prior to 2005, systems may have compliance samples analyzed with these less sensitive methods. However, EPA advises systems to have compliance samples analyzed and reported at the laboratory minimum detection limit.

If sampling demonstrates that arsenic exceeds the MCL, a CWS will be triggered into quarterly monitoring for that sampling point ''in the next quarter after the violation occurred.'' The State may allow the system to return to the routine monitoring frequency when the State determines that the system is reliably and consistently below the MCL. However, the State cannot make a determination that the system is reliably and consistently below the MCL until a

minimum of two consecutive ground water, or four consecutive surface water samples, have been collected (§ 141.23(c)(8)).

The Agency is not promulgating a reduced monitoring approach similar to the revised radionuclides final rule published on December 7, 2000 (65 FR 76708; EPA, 2000p). As noted above, all systems have to collect IOC samples once a year or once every three years, depending on the source water, unless they have a waiver. The Agency believes that very few States issue waivers for IOCs because the analysis is relatively inexpensive and most IOCs are naturally occurring elements that may be found in concentrations above the method detection limit. Therefore, the majority of systems must collect routine samples for the regulated IOCs; and most of the methods used for analysis of these contaminants will measure arsenic as well as antimony, beryllium, cadmium, chromium, copper, and nickel.

K. What do I Need to tell My Customers?

1. Consumer Confidence Reports

a. General requirements. In 1998, EPA promulgated the Consumer Confidence Report Rule (CCR) (codified at 40 CFR part 141, subpart O), a final rule requiring community water systems to issue annual water quality reports to their customers (63 FR 44512; EPA, 1998i). The reports are due each year by July 1, and provide a snapshot of water quality over the preceding calendar year. The reports include information on levels of detected contaminants and if the system has violated an MCL or a treatment technique, must also include information on the potential health effects of contaminants from appendix A to subpart O. When they have such violations, systems must also include in their report an explanation of the violation and remedial measures taken to address it. The arsenic health effects language is currently required when arsenic levels exceed 25 µg/L, one-half the existing MCL of 50 µg/L, required under § 141.154(b).

EPA is today retaining the health effects language for arsenic issued with the final CCR Rule and updating appendix A to subpart O to include the MCL and MCLG as revised in this rule, together with special arsenic-specific reporting requirements.

In addition to the standard reporting of arsenic detects and arsenic MCL violations, EPA is today finalizing a requirement (proposed at § 141.154(b); finalized at § 141.154(f)) that CWSs that detect arsenic between the revised and existing MCL (i.e., above 10 µg/L and up to and including 50 µg/L) prior to the effective date for compliance with the revised MCL, include the CCR Rule health effects language in their reports. This action is required even though, technically, the systems are not in violation of the regulations. This requirement will be effective for the five years after promulgation, when systems are not yet required to comply with the revised MCL. Then, beginning January 23, 2006, systems out of compliance must report violations of the revised arsenic MCL under § 141.153(d)(6) to the public.

Based on stakeholder and commenter input, the Agency decided in the final CCR Rule that it would use authority granted in SDWA section 1414(c)(4)(B)(vi) to require inclusion of health effects language for arsenic exceedances before the compliance date. That section allows the Administrator to require inclusion of health effects language for ''not more than three regulated contaminants'' other than those found to violate an MCL. The Agency used this authority for total trihalomethanes in the Stage 1 Disinfectants and Disinfection Byproducts Rule (63 FR 69390). The Agency is now using this same authority for arsenic, because it believes that it is important to provide customers with the most current understanding of the risk presented by this contaminant as soon as possible after establishing a new standard. This provision provides systems the flexibility to put this health effects information into context and to explain to customers that the system is complying with existing standards.

EPA modified the language it proposed on June 22, 2000 to reflect the MCL promulgated today and to clarify what language a system must include in its report. Systems subject to § 141.154(f) must begin including the arsenic health effects language in the report due by July 1, 2002.

b. Special informational statement. In addition, in the CCR Rule, the Agency decided to require that CCRs include additional information about certain contaminants, one of which was arsenic. As explained in the preamble to the CCR Rule (63 FR 44512 at 44514; EPA, 1998i), because of commenters' concerns about the adequacy of the current MCL, EPA decided that systems that detect arsenic between 25 µg/L and the current MCL must include some information regarding the arsenic standard (§ 141.154(b)). This informational statement is different from the health effects language required for an MCL violation. EPA noted in the CCR rule and in the arsenic proposal that the informational statement requirement would be deleted upon promulgation of a revised MCL.

In view of the fact that EPA is today finalizing an MCL somewhat higher than the technologically feasible MCL, and that some commenters expressed concern about the risk that a higher-than-feasible MCL might present to certain consumers, EPA is today retaining and revising an existing § 141.154(b) requirement that systems which find arsenic below the MCL must provide additional information to their customers. EPA believes that consumers should be aware of the uncertainties surrounding the risks presented even by very low levels of arsenic. While EPA addressed many of the sources of uncertainty in its risk analysis of arsenic in support of the final rule, several sources of uncertainty remain. Chief among these is the mode of action (i.e., the shape of the dose-response curve). EPA continues to research the effects of arsenic (according to an arsenic research plan required by the 1996 SDWA Amendments and submitted to Congress) and should have a better understanding of these effects as the relevant research is completed. EPA believes that this uncertainty adequately justifies retaining the existing requirement to provide consumers with information about low levels of arsenic.

The existing § 141.154(b) requirement is today updated in two ways. First, the arsenic level that triggers the additional information is reset from 25 µg/L (half the existing MCL) to 5 µg/L (half the revised MCL). In the preamble to the CCR Rule, we explained that ''[many] commenters agreed that half the MCL would be an appropriate threshold for requiring additional risk-related information.'' EPA continues to believe that half the MCL is an appropriate trigger for special information about certain contaminants. Beginning with the report due by July 1, 2002, CWSs that find arsenic above 5 µg/L and up to and including 10 µg/L must include § 141.154(b) special health information about arsenic in their consumer confidence reports.

Second, the suggested text of the special information is updated. Rather than stating that ''EPA is reviewing the drinking water standard for arsenic . . .,'' the statement announces clearly that the consumer's water meets EPA's new standard while also noting the cost-benefit trade-off involved in setting that standard. The suggested text further notes that there are uncertainties (described in section III.F of this notice) surrounding the risks of low levels of arsenic. Systems retain the flexibility, as defined in the existing requirement, to

adjust this language in consultation with the Primacy Agency.

2. Public Notification

On May 4, 2000, EPA issued the final Public Notification Rule (PNR) to revise the minimum requirements that public water systems must meet for public notification of violations of EPA's drinking water standards (65 FR 25982; EPA, 2000e). Water systems must begin to comply with the revised PNR regulations on October 31, 2000 (if they are in jurisdictions where the program is directly implemented by EPA) or on the date a primacy State adopts the new requirements (not to exceed May 6, 2002). EPA's drinking water regulation on arsenic affects public notification requirements and amends the PNR as part of its rulemaking.

Today's final rule will require CWSs and NTNCWSs to provide a Tier 2 public notice for arsenic MCL violations and to provide a Tier 3 public notice for violations of the monitoring and testing procedure requirements. The new arsenic MCL will become effective January 23, 2006. CWSs and NTNCWSs must provide public notification to consumers for any violations after the effective date of the revised arsenic MCL. The PNR requires owners and operators of public water systems to give notice to persons they serve for all violations when they are operating under a variance or exemption (or violate conditions of the variance or exemption).

L. What Financial Assistance is Available for Complying With This Rule?

There are two major sources of Federal financial assistance available for water systems: the Drinking Water State Revolving Fund (DWSRF) and the Water and Waste Disposal Loan and Grant Program of the Rural Utilities Service (RUS) of the U. S. Department of Agriculture.

The 1996 SDWA Amendments authorized (*i.e.*, approved spending) $9.6 billion for the DWSRF program. To date, Congress has appropriated (*i.e.*, provided) $4.2 billion, which includes $825 million for the program in Fiscal Year 2001. By the end of September 2000, States had been awarded $3.2 billion in capitalization grants and, from that, had provided more than $2.8 billion in assistance to eligible drinking water systems. The Federal capitalization grant, together with State matching funds, is currently making available about $1 billion per year. States have considerable discretion in designing their DWSRF program, and have the option of offering special assistance to systems that the State considers to be disadvantaged. Special assistance may include principal forgiveness, a negative interest rate, an interest rate lower than that charged to non-disadvantaged systems, and extended repayment periods of up to 30 years. Federal law allows DWSRF assistance to be provided to water systems of both public ownership and private ownership, although some States are unable or choose not to provide assistance to privately owned systems.

EPA recognizes that public water systems and States face a significant challenge in implementing new requirements that are needed to ensure the continued provision of safe drinking water. While the DWSRF program is proving to be a significant source of funding, it cannot be viewed as the only source of funding. It will take a concerted effort on the part of Federal, State and local governments, private business, and utilities to address the significant infrastructure needs identified by public water systems. In order to ensure that the DWSRF program is used to focus attention on the highest priority needs, all States must give priority to those drinking water infrastructure improvement projects that will have the greatest public health benefit or ensure compliance with SDWA. State DWSRF programs are currently making loans available to the highest ranked projects on their lists and are also using a portion of the grants to support other important drinking water program activities.

The RUS program is focused on providing a safe, reliable water supply and wastewater treatment to residents of rural America. The program offers a combination of low interest loans and grants to systems serving rural areas and cities and towns of up to 10,000 persons and which are publicly owned (including Native American systems) or operated as not-for-profit corporations. In recent years the RUS program has typically offered assistance totaling about $1.3 billion per year, about 60% of which is directed to drinking water projects. Thus, about $780 million per year is available for rural drinking water systems from this program. Together with the approximately $1 billion per year being made available through the DWSRF, this results in a total of about $1.78 billion per year of Federal financial assistance available for drinking water.

Other Federal financial assistance programs exist that may help systems with SDWA compliance related expenditures. However, these other programs are not generally as large or focused on drinking water as are the DWSRF and RUS programs. EPA's Environmental Financial Advisory Board has developed a ''Guidebook of Financial Tools'' (EPA, 1999c), which offers a comprehensive summary of public and private programs and mechanisms for paying for drinking water and other environmental systems. The handbook is available through EPA's web site at: *http://www.epa.gov/efinpage/guidbk98/index.htm*.

The Federal financial assistance programs described previously clearly face numerous, competing demands on their resources. EPA's 1995 Drinking Water Infrastructure Needs Survey (EPA, 1997a) identified a total 20-year need for all systems of $138.4 billion. The single largest category of need (accounting for over half of the total need) is installation and rehabilitation of transmission and distribution systems. Treatment needs constitute the second largest category of need, accounting for over ¼ of total needs. Storage and source rehabilitation and development constitute the remaining major categories of needs. Thus, systems seeking financial assistance for installation of arsenic treatment are competing for resources with systems seeking assistance for compliance with other rules and with systems seeking resources for basic infrastructure repair and replacement. In seeking to meet these numerous and competing needs, the Agency recognizes the importance of priority setting for financial assistance programs. Systems having the financial capability to secure funding through the capital markets should do so, leaving the Federal financial assistance programs to assist the truly needy systems. Since the demand for assistance will likely outstrip the supply of assistance, States may wish to consider exemptions, which will provide additional time for systems to secure financial assistance.

M. What is the Effective Date and Compliance Date for the Rule?

In the proposed rule, EPA made a finding that all small systems (*i.e.*, systems serving 10,000 people or less) would be granted a 2-year capital improvement extension which extends the MCL effective date for purposes of compliance with the new MCL to January 23, 2006. EPA proposed the 2-year capital improvement extension for small systems because of the time required for systems to plan, finance, design and construct new treatment systems.

Large systems were not provided this additional time because of the greater resources these systems have to perform

capital improvements in a timely manner. However, upon consideration of information submitted by commenters, EPA has determined that large systems will also require an additional 2 years to complete the capital improvements necessary to comply with the arsenic MCL. While large systems (*i.e.*, systems serving more than 10,000 people) do have greater resources to implement capital improvements, (*e.g.*, engineering and construction management staff to manage the projects), these systems generally also have more entry points to the distribution system that will require treatment.

A number of treatment technologies are listed as BAT for the proposed rule: ion exchange, activated alumina, reverse osmosis, modified coagulation/filtration, modified lime softening and electrodialysis reversal. There are also several emerging technologies for arsenic removal, such as nanofiltration and granular ferric hydroxide. To ensure cost effective compliance with the arsenic MCL, systems will need to evaluate their treatment technology options as a first step. This planning step may include pilot studies with potential treatment systems, or it may be limited to an evaluation of the raw water characteristics. Systems choosing to conduct pilot testing may take a year or more to contract with vendors and to perform pilot testing.

Once the planning step is completed systems must design and construct the treatment systems. Design and permitting of the treatment systems can take an additional year, and construction of the treatment system can take another year. Because systems will also need time to: obtain funding, obtain local government approval of the project, or acquire the land necessary to construct these technologies, it is likely that most large systems will need additional time beyond the three-year effective date for compliance with the new MCL that EPA proposed.

Based upon these considerations, EPA determined, in accordance with section 1412(b)(10) of SDWA, that the compliance date for the new arsenic MCL, regardless of system size, will be 5 years from the date of promulgation of the standard. See section I.H. for more information regarding variance and exemptions.

N. How Were Stakeholders Involved in the Development of This Rule?

EPA met extensively with a broad range of groups during the development of the arsenic proposal, both at EPA-sponsored meetings and at other organizations' meetings. The **Federal Register** published notices about EPA's arsenic meetings, and we made conference call lines available for those who chose not to attend in person. In addition, EPA notified people about regulatory actions via the three **Federal Register** notices (proposal, notice of data availability, and correction notice), by mail and e-mail. Over 600 people asked to be on the mailing list during the regulatory development period.

EPA held arsenic stakeholders meetings September 11–12, 1997 in Washington, DC; February 25, 1998 in San Antonio, Texas; May 5, 1998 in Monterey, California; June 2–3, 1999 in Washington, DC; and August 9, 2000 in Reno, Nevada. For each of these meetings we invited representatives of States, tribal groups, associations, utilities and environmental groups. The docket for the proposed rule (W–99–16) contains the meeting discussion papers, agendas, participants lists, presentation materials, and executive meeting summaries. All the meeting materials, except the presentations and attendance list, are also available on EPA's arsenic in drinking water web page, *www.epa.gov/safewater/arsenic.html.*

EPA also presented sessions on drinking water regulations (including arsenic) at the National Indian Health Board Annual Conference in Anchorage, Alaska in September 1998. The Inter-tribal Council of Arizona hosted a consultation for EPA with Tribes February 24–25, 1999 in Las Vegas, NV at which an overview of the proposed arsenic regulation was presented. EPA also conducted a series of workshops at the Annual Conference of the National Tribal Environmental Council May 18–20, 1999 in Eureka, California. The Council distributed materials and gathered comments on EPA's drinking water regulations from all recognized Tribal governments.

In addition to the general stakeholder meetings, EPA also had targeted meetings with States' representatives. In May 1999, State regulatory representatives from California, Nevada, Michigan, Illinois, Texas, Indiana, New Mexico, and Louisiana joined EPA in a discussion on the development of the cost of compliance decision tree. In August 1999, State regulatory representatives from Illinois, Indiana, New Mexico, and Texas joined EPA workgroup members in a discussion of the NRC study use, review of the occurrence work, treatment technology update, and regulatory changes. The interaction from these meetings with State colleagues improved the regulatory language and the preamble.

In May 2000, EPA presented a summary of the rule to the National Governors' Association. In May 2000, EPA held a dialogue in Washington, DC with State officials and the associations that represent elected officials. Presentations on arsenic and other drinking water rules under development were given to representatives of the National Association of Towns and Townships, National Governors' Association, National Association of Counties, National League of Cities, Association of State Drinking Water Administrators, Environmental Council of the States, Florida Department of Environmental Protection, Drinking Water Section, Association of State and Territorial Health Officials, and the International City/County Management. The purpose of the dialogue was to consult on the expected compliance and implementation costs of these rules for State, county, and local governments and gain a better understanding of the views of representatives of State, county, and local governments and their elected officials. The meeting materials are in the docket for the proposed rule.

In addition to the various special meetings and discussions mentioned previously, EPA representatives delivered arsenic regulatory development presentations at a variety of meetings held by other organizations. These included the American Water Works Association (AWWA) Inorganic Contaminants Meetings in February, 1998 in San Antonio, TX and in February, 2000 in Albuquerque, NM; meetings of the Association of State Drinking Water Administrators (ASDWA) in February and October 1998, March and October 1999, and in October 2000; meetings of the Association of Metropolitan Water Agencies (AMWA) in January and March 1998; and a meeting of the Association of California Water Agencies in March 1998. EPA also gave several technical presentations and regulatory updates at the AWWA annual meetings as well as at the AWWA Water Quality and Technology Conferences in 1998, 1999, and 2000. EPA participated in the Society of Toxicology arsenic workshop in Philadelphia, PA in March 2000. Finally, EPA co-sponsored and participated in the four International Conferences on Arsenic Exposure and Health Effects in July 1993, June 1995, July 1998, and June 2000.

After the proposal was published in the **Federal Register**, EPA notified all persons on its electronic mailing list for the arsenic rule of its availability and sent information. The Regulatory Impact Analysis went on the arsenic web page a week after the proposal publication. Similarly, EPA also notified the individuals and organizations on this

mailing list about the NODA and the correction notice.

II. Statutory Authority

Section 1401 of SDWA requires a ''primary drinking water regulation'' to specify a MCL if it is economically and technically feasible to measure the contaminant and to include testing procedures to insure compliance with the MCL and proper operation and maintenance. An NPDWR that establishes an MCL also lists the technologies that are feasible to meet the MCL, but systems are not required to use the listed technologies (section 1412(b)(3)(E)(i)). As a result of the 1996 amendments to SDWA, when issuing a NPDWR, EPA must also list affordable technologies that achieve compliance with the MCL or treatment technique for three categories of small systems: those serving 10,000 to 3301 persons, 3300 to 501 persons, and 500 to 25 persons. EPA can list modular (packaged) and POE and POU treatment units for the three small system sizes, as long as the units are maintained by the public water system or its contractors. Home units must contain mechanical warnings to notify customers of problems (section 1412(b)(4)(E)(ii)).

In section 1412(b)(12)(A) of SDWA, as amended August 6, 1996, Congress directed EPA to propose a national primary drinking water regulation for arsenic by January 1, 2000 and issue the final regulation by January 1, 2001. At the same time, Congress directed EPA to develop a research plan by February 2, 1997 to reduce the uncertainty in assessing health risks from low levels of arsenic and conduct the research in consultation with the NAS, other Federal agencies, and interested public and private entities. The amendments allowed EPA to enter into cooperative agreements for research. On October 27, 2000, Public Law 106–377, the bill which included Fiscal Year 2001 appropriations for EPA, amended the statutory deadline to direct EPA to promulgate a final arsenic standard by no later than June 22, 2001.

Section 1412(a)(3) requires EPA to propose an MCLG simultaneously with the NPDWR. The MCLG is defined in section 1412(b)(4)(A) as ''the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.'' Section 1412(b)(4)(B) specifies that each NPDWR will specify an MCL as close to the MCLG as is feasible, with two exceptions added in the 1996 amendments. First, the Administrator may establish an MCL at a level other than the feasible level if the treatment to meet the feasible MCL would increase the risk from other contaminants or the technology would interfere with the treatment of other contaminants (section 1412(b)(5)). Second, if benefits at the feasible level would not justify the costs, EPA may propose and promulgate an MCL ''that maximizes health risk reduction benefits at a cost that is justified by the benefits'' (section 1412(b)(6)).

When proposing an MCL, EPA must publish, and seek public comment on, the health risk reduction and cost analyses (HRRCA) of each alternative maximum contaminant level considered (section 1412(b)(3)(C)(i)). This includes the quantifiable and nonquantifiable benefits from reductions in health risk, including those from removing co-occurring contaminants (not counting benefits resulting from compliance with other proposed or final regulations), costs of compliance (not counting costs resulting from other regulations), any increased health risks (including those from co-occurring contaminants) that may result from compliance, incremental costs and benefits of each alternative MCL considered, and the effects on sensitive subpopulations (e.g., infants, children, pregnant women, elderly, seriously ill, or other groups at greater risk). EPA must analyze the quality and extent of the information, the uncertainties in the analysis, and the degree and nature of the risk. As required by the statute, EPA issued a HRRCA for arsenic (EPA, 2000i) as section XIII of the June 22, 2000 arsenic proposal (65 FR 38888 at 38957).

The 1996 amendments also require EPA to base its action on the best available, peer-reviewed science and supporting studies and to present health effects information to the public in an understandable fashion. To meet this obligation, EPA must specify, among other things,

> peer-reviewed studies known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data (section1412(b)(3)(B)(v)).

Section 1413(a)(1) allows EPA to grant States primary enforcement responsibility (primacy) for NPDWRs when EPA has determined that the State has adopted regulations that are no less stringent than EPA's. States must adopt comparable regulations within two years of EPA's promulgation of the final rule, unless a two-year extension is granted. State primacy also requires, among other things, adequate enforcement (including monitoring and inspections) and reporting. EPA must approve or deny State applications within 90 days of submission (section 1413(b)(2)). In some cases, a State submitting revisions to adopt an NPDWR has primacy enforcement authority for the new regulation while EPA action on the revision is pending (section 1413(c)). Section 1451(a) allows EPA to grant primacy enforcement responsibility to Federally recognized Indian Tribes, providing grant and contract assistance, using the procedures applied to States.

III. Rationales for Regulatory Decisions

A. What Is the MCLG?

The proposed rule suggested that an MCLG of zero be established for arsenic in view of the fact that we are currently unable to specify a safe threshold level due to uncertainty about the mode of action for arsenic. Today's rule establishes a final MCLG for arsenic of zero. After full consideration of public comments, EPA continues to believe that the most scientifically valid approach, given the lack of critical data, is to use the linear approach to assessing the mode of action. This approach results in an MCLG of zero. In the proposal and the NODA, EPA noted that the available data point to several potential carcinogenic modes of action for arsenic (EPA also requested additional data on the mode of action). However, which mode(s) of action is operative is unknown. For this reason, while the Agency recognizes that the dose-response relationship may be sublinear, the data do not provide any basis upon which EPA could reasonably construct this relationship. Thus, EPA has no basis upon which to depart from its assumption of linearity. The NRC report noted that available data that could help determine the shape of the dose-response curve are inconclusive and do not meet EPA's stated criteria for departure from the default assumption of linearity (NRC, 1999). See section III.D.1 for a thorough discussion of the dose-response assessment.

Because the postulated mode of action for arsenic cannot specifically be described and the key events are unknown, the Agency lacks sufficient available, peer-reviewed information to estimate quantitatively a non-linear mode of action. The Agency has thus decided not to depart from the assumption of linearity in selecting an MCLG of zero.

B. What Is the Feasible Level?

1. Analytical Measurement Feasibility

In the development of a drinking water regulation, EPA derives a practical quantitation limit (PQL) to estimate or evaluate the minimum,

reliable quantitation level (concentration) that most laboratories can be expected to meet during day-to-day operations. The PQL accounts for the limits of current measurement technologies and the laboratories that use the methods written around these analytical technologies. The PQL was defined in a November 13, 1985 rule (50 FR 46906, EPA, 1985b) as ''the lowest concentration of an analyte that can be reliably measured within specified limits of precision and accuracy during routine laboratory operating conditions.'' A PQL is determined either through use of interlaboratory studies or, in absence of sufficient studies, through the use of a multiplier of 5 to 10 times the method detection limit (MDL). Interlaboratory data are obtained from water supply (WS) studies that are conducted by EPA to certify drinking water laboratories. The WS studies require a candidate laboratory to measure the concentration of the target analyte within specified limits (e.g., ±30%) of the amount spiked into a PE (now called PT) challenge sample. Using graphical or linear regression analysis of the WS data, the Agency sets a PQL at a concentration where at least 75% of experienced laboratories (generally EPA and State laboratories) could perform within this acceptable limit for accuracy, e.g., ±30%.

As discussed in the June 22, 2000 proposed rule for arsenic, the Agency determined that the PQL (i.e., the feasible level of measurement) for arsenic in drinking water is 0.003 mg/L with an acceptance limit of ±30%. The derivation of the PQL for arsenic is consistent with the process used to determine PQLs for other metal contaminants regulated under SDWA and takes into consideration the recommendations from EPA's SAB (EPA, 1995). Using acceptance limits of ±30% and linear regression analysis of six recent WS studies, EPA derived a PQL of 0.00258 mg/L for arsenic, which was rounded to 0.003 mg/L at the ±30%. While the PQL represents a relatively stringent target for laboratory performance, based on the WS data used to derive the PQL for arsenic, the Agency believes most laboratories (using appropriate quality assurance and quality control procedures) can achieve this level on a routine basis.

2. Treatment Feasibility

EPA has determined that 3 µg/L is technologically feasible for large systems based on peer-reviewed treatment information. EPA has listed seven BATs for arsenic in the final rule. They are: ion exchange when sulfate ≤50 mg/L, activated alumina, reverse osmosis, modified coagulation/filtration, modified lime softening at pH >10.5, electrodialysis reversal, and oxidation/filtration when the iron to arsenic ratio is at least 20:1. Bench, pilot and full-scale data were examined to determine the capabilities of the treatment processes. The treatment performance data are summarized in ''Technologies and Costs for the Removal of Arsenic from Drinking Water'' (EPA, 2000t).

C. How Did EPA Revise its National Occurrence Estimates?

1. Summary of Occurrence Data and Methodology

Our data and methodology for estimating arsenic occurrence are substantially the same as in the proposed rule (65 FR 38888 at 38903; EPA, 2000i). The data and methodology are described in detail in (EPA, 2000r). Following is a summary of our method. All of the elements of this summary are the same as in the proposed rule, except where noted.

Our occurrence database consists of arsenic compliance monitoring samples of finished drinking water, submitted voluntarily by drinking water agencies in 25 States. The 25 States are distributed throughout the U.S., with at least one located in each of the seven geographic regions that we used in our analysis (65 FR 38888 at 38906; EPA, 2000i; EPA, 2000r). In some States we used data only from a subset of years in which detection limits were lowest. For each PWS in our database, we estimated the mean arsenic concentration over time in finished water, by first ''filling in'' non-detected concentrations, using one of two statistical methods (EPA, 2000r), then averaging the detected and filled-in observations from that system. Next, we collected the system mean estimates into State distributions, then merged the State distributions into regional and then national distributions. In combining the regional distributions into a national distribution, we weighted each region by the total number of systems in the region, not just the number of systems in the States in our database. This procedure has the same effect as assigning the regional distributions to the 25 States for which we have no observations in our database.

In addition to the distributions of system means, we estimated nationwide intra-system coefficients of variation (ISCV). For a given water system, the ISCV quantifies the variation of mean arsenic levels at the system's entry points to the distribution system (i.e., sampling points of individual wells and treatment points) around the overall system mean. We estimated a separate ISCV for each ground water (gw) CWS, surface water (sw) CWS, and, unlike in the proposed rule, ground water NTNCWS. Each of these ISCVs is assumed to be constant throughout the U.S.

2. Corrections and Additions to the Data

Some public commenters asked whether our data might have errors in the classification of water samples as treated or untreated. If that were the case, then including untreated samples in our database could cause us to overestimate occurrence in finished water. In order to determine whether and to what extent these problems exist, we solicited additional data sets from drinking water agencies in six States (Alabama, California, Illinois, New Mexico, North Carolina, and Texas) from whom we already had data in our draft data set. All six States responded to our request by submitting additional data, including additional identifiers of untreated observations, as well as some new observations not contained in our draft data base. In California, once the newly identified untreated observations were removed from the data set, the number of surface water observations decreased from 2,488 in the draft data set to 1,280 in the final data set. For ground water, on the other hand, the number of samples in California increased from 5,622 to 9,494. The increase resulted in part from the additional data, and in part because we changed our methodology, as we describe below, to include samples from both treated and untreated ground water in our ground water estimates. Changes in the other five States were of smaller size.

We also updated our data set from Utah. The latest data from Utah include more observations and covers the years 1980 to 1999. The total number of observations from Utah in our data set increased from 2,447 to 4,684.

Table III.C–1 compares the number of observations, systems, and States in our database, by system type and source water type, in the proposed and final rules. Note that our complete database is larger than shown in Table III.C–1, but in some States we excluded data from some years in which analytical detection limits were highest. Table III.C–1 counts only the data from the years that we used to estimate occurrence.

TABLE III.C–1.—SUMMARY OF OCCURRENCE DATABASES FOR THE PROPOSED AND FINAL RULES

System type	Source water	Proposed rule			Final rule		
		# of observations	# of systems	# of States	# of observations	# of systems	# of States
CWS	GW	44,502	15,640	25	53,307	15,931	25
CWS	SW	15,892	2,360	25	16,212	2,228	25
NTNCWS	GW	*6,420	*4,662	*18	7,045	4,382	17
NTNCWS	SW	*420	*150	*14	*409	*118	*15
All	All	67,234	22,812	25	76,973	22,659	25

*Data not used in estimating occurrence.

We also updated our baseline inventory of the public water systems in the U.S. and the populations they serve, by type of system, type of source water, and State. We use this inventory to estimate the numbers of systems and people affected by different MCL options, by multiplying the number of people or systems in a given category by the estimated fraction of systems in that category with mean arsenic greater than the levels of interest. In the proposed rule, the occurrence and regulatory impact analyses used different sets of baseline estimates: occurrence took baseline estimates from EPA's 4th quarter 1997 Safe Drinking Water Information System (SDWIS) database, while the proposal's regulatory impact analysis (RIA) used 4th quarter 1998 SDWIS. The result, as some public commenters pointed out, was that the proposed rule contained two inconsistent sets of estimates of the numbers of people and systems affected by different MCL options (65 FR 38888; EPA, 2000i, Table V–3; EPA, 2000h, Exhibit 4–11). The two estimates of total numbers of systems affected at various MCLs differed by up to 27%. We corrected this inconsistency by adopting, with one modification, the baseline inventory in EPA's Drinking Water Baseline Handbook (EPA, 2000b) throughout this preamble and all supporting documents for the final rule. The inventory in the Baseline Handbook is taken from EPA's 4th quarter 1998 SDWIS database, or the same that was used in the proposed RIA. The only modification we made to the inventory was in Alaska where the Baseline Handbook lists zero NTNCWS and zero population served by NTNCWS. Following public comment from the Alaska Department of Environmental Conservation, we corrected the inventory of NTNCWS in Alaska. The Baseline Handbook and corrected Alaska inventories are shown in Table III.C–2.

TABLE III.C–2.—ALASKA PWS INVENTORIES: BASELINE HANDBOOK AND CORRECTED

System type	Source water	Baseline handbook		Corrected	
		No. of systems	Population served	No. of systems	Population served
CWS	GW	508	227,874	344	175,367
CWS	SW	160	317,155	121	260,792
NTNCWS	GW	0	0	161	51,909
NTNCWS	SW	0	0	35	56,013
All	All	668	545,029	661	544,081

The revised estimates of numbers of systems affected at different arsenic concentrations are shown in Table III.C–6. Since the proposed and final Economic Analysis use the same set of baseline estimates (except for the small correction in Alaska), changes in Table III.C–6 compared to the proposed RIA (EPA, 2000h, Exhibit 4–11) are due to changes in the occurrence estimates in Table III.C–3, which follows. Changes in Table III.C–6 compared to the proposed occurrence analysis (65 FR 38888; EPA, 2000i, Table V–3) are due to changes in occurrence estimates and also correction of the baseline.

3. Changes to the Methodology

In September 1999, EPA sponsored a peer review of our occurrence data and methodology by three independent experts in geochemistry and statistics. In response to that review and public comments, we have made minor revisions to our methodology for estimating occurrence in two ways since the proposed rule.

First, we now estimate the occurrence distribution for ground water NTNCWSs separately from CWSs. In the proposed rule, we used the CWSs distribution as a surrogate for NTNCWSs, for both ground and surface water systems. We now estimate occurrence in ground water NTNCWSs separately, using the same method as for CWSs, as described previously. For ground water NTNCWSs we have data from 17 States, compared to 25 States for CWSs, so there are on average fewer States with data in each region. Moreover we have no data about NTNCWSs from any States in the Southeast region (Alabama, Florida, Georgia, Mississippi, and Tennessee). We therefore used the occurrence distribution for ground water CWSs as a surrogate for ground water NTNCWSs in the Southeast. The revised occurrence estimates for ground water NTNCWSs are shown in Table III.C–3.

We still do not estimate a separate occurrence distribution for surface water NTNCWSs. For surface water NTNCWSs, we did not believe that the 118 systems for which data were provided for NTNCWSs formed as strong a basis for estimating occurrence as the much larger CWS surface water data base, especially in the concentration range of interest. In addition, there is less reason to believe that surface water NTNCWSs will differ from surface water CWSs. We thus believe the surface water CWS estimates provide the soundest basis for estimating impacts given the types of data available.

Second, we have improved our method for estimating intra-system

variability. In the proposed rule, we estimated the ISCV by measuring the total amount of variability of arsenic concentrations around the system mean within each system. The problem with that approach is that it fails to distinguish between-source variability (variability of sampling-point means around the system mean) from within-source variability (variability of observations at each sampling point around the sampling-point mean). Within-source variability includes variations in concentrations through time at a source, and analytical variability caused by imprecision of the analytical methods used to measure arsenic in water samples. The ISCV is intended to describe only between-source variability within a system. Following the recommendations of the peer review, we corrected our model of intra-system variation to include separate terms for between-source and within-source variability. As a result, our estimates of the ISCVs decreased, since we separate out the within-source variability. The revised ISCV estimates are shown in Table III.C–7.

A third change to our methodology is that, for ground water systems, we now include observations on both treated and untreated ground water in our analysis. With the exception of iron removal technologies, most treatment in ground water systems has little effect on arsenic, so one might expect arsenic concentrations to be similar in treated and untreated samples. This turns out to be the case in our data: estimates that included untreated samples were either slightly higher or lower than estimates with only treated samples. We therefore decided to include both treated and untreated samples in our ground water occurrence estimates. For surface water estimates, we still use only samples from treated water.

4. Revised Occurrence Results

Table III.C–3 shows our revised estimates of the national distribution of arsenic occurrence, by system type and source water type. The distributions are stated in terms of ''exceedance probabilities,'' that is, the fraction of systems with mean arsenic equal to or greater than the given concentration, in finished water. The ''weighted point estimate'' is the combination of State distributions into a national distribution, as described previously. We consider the weighted point estimate to be our best estimate. The ''lognormal fit'' is the result of fitting a lognormal distribution to the weighted point estimates. The lognormal fit is an approximation to the weighted point estimate, which we use in our cost and benefit analyses (sections III.E and III.F). The lognormal approximation simplifies the simulation studies that we use to derive costs and benefits, by allowing each distribution to be summarized in terms of only two parameters. Table III.C–4 lists the parameters of the fitted lognormal distributions.

TABLE III.C–3.—NATIONAL OCCURRENCE EXCEEDANCE PROBABILITY ESTIMATES

	Percent of systems with mean finished arsenic exceeding concentrations (μg/L) of:				
	3	5	10	20	50
Ground Water CWS					
Weighted point estimate	19.9	12.1	5.3	2.0	0.43
95% confidence interval [1]	[19.3,21.9]	[11.7,13.0]	[5.2,5.9]	[1.9,2.3]	[0.38,0.52]
Lognormal fit	19.7	12.0	5.3	2.0	0.43
Surface Water CWS					
Weighted point estimate	5.6	3.0	0.80	0.32	0.10
95% confidence interval [1]	[4.8,20.6]	[1.8,9.7]	[0.52,1.6]	[0.13,0.82]	[0.02,0.59]
Lognormal fit	5.6	3.0	1.1	0.37	0.067
Ground Water NTNCWS					
Weighted point estimate	24.2	15.6	5.3	2.1	0.47
95% confidence interval [1]					
Lognormal fit	23.4	14.2	6.1	2.2	0.42

[1] Brackets indicate confidence intervals which were computed for the proposed rule and have not been updated. No confidence intervals were computed for NTNCWS.

TABLE III.C–4.—PARAMETERS OF LOGNORMAL DISTRIBUTIONS FITTED TO NATIONAL OCCURRENCE DISTRIBUTIONS

System type	Source water	Log-mean [1]	Log-SD [2]
CWS	GW	−0.25	1.58
CWS	SW	−1.68	1.74
NTNCWS	GW	0.03	1.47

[1] Log-mean = mean of natural logarithm of arsenic concentrations (μg/L).
[2] Log-SD = standard deviation of natural logarithm of arsenic concentrations (μg/L).

Table III.C–3 lists separate distribution estimates for ground and surface water CWS and for ground water NTNCWSs. As we said previously, we believe surface water CWSs provide a more sound basis for estimation.

For CWSs, the estimates in Table III.C–3 have changed only slightly since the proposed rule. For ground water CWSs, the largest change is an increase at 10 μg/L from 5.3% exceedance to 5.4%. For surface water CWSs, the largest change is a decrease at 3 μg/L from 6.0% in the proposed rule to 5.6% in Table III.C–3. This decrease is as expected, since, as we explained previously, our revised database excludes some observations on untreated water that were included in the draft database. Our surface water

occurrence estimates did increase slightly at 5 μg/L, however, as Table III.C–8 shows.

For ground water NTNCWSs, our estimated exceedance probabilities increased from 19.9% to 24.2% at 3 μg/L, and from 12.1% to 15.6% at 5 μg/L. The estimates at higher concentrations changed by at most 0.1% point. The estimates changed because we now estimate a separate distribution for ground water NTNCWSs, as we described previously.

The confidence intervals listed in Table III.C–3 were computed for the proposed rule, using a computationally intensive resampling procedure, as described in (EPA, 2000r). Since our data set and point estimates have changed only minimally for the final rule, we did not recompute the confidence intervals.

Table III.C–5 shows occurrence distributions in seven geographic regions presented in the proposal and developed by Frey and Edwards (1997). (The States and names of these geographic regions in Table III.C–5 are based directly on the authors' designations.) As in the proposed rule, we find concentrations to be generally highest in the West, and generally lowest in the Southeast and Mid-Atlantic. In regions where analytical reporting limits in our database were mostly higher than 3 μg/L or 5 μg/L, we did not attempt to estimate occurrence at the lowest concentrations. These cases are indicated by dashes in Table III.C–5. In some regions, we were able to estimate occurrence in fewer States at the lowest concentrations, and this sometimes led to inconsistencies in our estimates. For example, for New England surface water CWSs, we estimated occurrence at 3 μg/L using only Maine, and at 5 μg/L using Maine, New Hampshire, and New Jersey. The introduction of more States at higher concentrations led to inconsistent estimates of 6.2% and 11.7% of New England surface water CWSs with arsenic exceeding 3 μg/L and 5 μg/L, respectively. We did not try to resolve these inconsistencies at the regional level, but note that the national occurrence distributions, listed in Table III.C–3, are consistent.

TABLE III.C–5.—REGIONAL OCCURRENCE EXCEEDANCE PROBABILITY ESTIMATES

	Percent of systems with mean finished arsenic exceeding concentrations (μg/L) of:			
	3	5	10	20
Ground Water CWS				
Mid-Atlantic	(2)	*0.4	0.7	0.0
Midwest	21.2	13.8	6.2	2.4
New England	21.7	20.8	7.0	2.9
North Central	21.3	13.1	6.0	2.4
South Central	18.6	9.7	3.6	1.1
Southeast	0.9	0.4	0.1	0.0
West	31.5	25.2	12.5	5.0
Surface Water CWS				
Mid-Atlantic	(2)	0.1	0.0	0.0
Midwest	3.0	1.6	0.7	0.3
New England	[1] 6.2	11.7	1.0	0.4
North Central	9.1	3.2	0.6	0.1
South Central	3.8	0.9	0.2	0.1
Southeast	0.2	0.1	0.0	0.0
West	12.7	8.2	3.4	1.4
Ground Water NTNCWS				
Mid-Atlantic	(2)	(2)	1.4	0.5
Midwest	26.2	17.1	8.2	3.3
New England	(2)	(2)	2.1	0.6
North Central	29.8	22.8	15.0	9.3
South Central	24.0	14.4	5.9	1.9
Southeast	0.9	0.4	0.1	0.0
West	34.3	21.9	10.5	4.2

[1] Estimate is inconsistent with estimate at the next higher concentration. See text for explanation.
[2] Means not enough data to form an estimate. See text for explanation.

Table III.C–6 shows our estimates of the numbers of systems with mean finished arsenic concentrations in various ranges, by system type and size. As in the proposed rule, we find no evidence of any consistent difference in mean arsenic among systems of different sizes. We conclude that the occurrence distributions shown in Table III.C–3 apply to all categories of system size. In Table III.C–6, therefore, the estimated numbers of systems are computed by multiplying the baseline inventory of all systems of the given size and type, by the corresponding probability of falling within the given range, computed from Table III.C–3 and shown in the ''% of systems'' rows. The estimates for surface water NTNCWSs were computed by applying the occurrence distribution for surface water CWSs to the baseline inventory of surface water NTNCWSs.

TABLE III.C–6.—STATISTICAL ESTIMATES OF NUMBERS OF SYSTEMS WITH AVERAGE FINISHED ARSENIC CONCENTRATIONS IN VARIOUS RANGES

System size (population served)	Number of systems with mean arsenic concentration (μg/L) in the range of:			
	>3 to 5	>5 to 10	>10 to 20	>20
Ground Water CWS				
25 to 500	2,272	1,980	961	584
501 to 3,300	811	706	343	208
3,301 to 10,000	192	167	81	49
10,001 to 50,000	95	83	40	24
>50,000	15	13	6	4
All	3,384	2,949	1,432	870
% of systems	7.8%	6.8%	3.3%	2.0%
Surface Water CWS				
25 to 500	76	68	14	10
501 to 3,300	92	81	17	12
3,301 to 10,000	47	41	9	6
10,001 to 50,000	41	36	8	5
>50,000	15	13	3	2
All	270	239	51	34
% of systems	2.5%	2.2%	0.5%	0.3%
Ground Water NTNCWS				
25 to 500	1,440	1,713	545	348
501 to 3,300	230	274	87	56
3,301 to 10,000	5	6	2	1
10,001 to 50,000	1	1	0	0
>50,000	0	0	0	0
All	1,677	1,995	635	405
% of systems	8.6%	10.3%	3.3%	2.1%
Surface Water NTNCWS				
25 to 500	14	13	3	2
501 to 3,300	5	4	1	1
3,301 to 10,000	1	1	0	0
10,001 to 50,000	0	0	0	0
>50,000	0	0	0	0
All	20	17	4	2
% of systems	2.5%	2.2%	0.5%	0.3%

Numbers do not add up to totals in some cases due to rounding.

Our proposed and final estimates of intra-system coefficients of variation are shown in Table III.C–7. The revised estimates are lower, since, as we described previously, we now better separate out within-source (time and analytical) variability from the variability of source means within a system. The ISCV estimate for ground water NTNCWSs also has changed because we now estimate it separately from that of ground water CWSs.

TABLE III.C–7.—ESTIMATED INTRA-SYSTEM COEFFICIENTS OF VARIATION (ISCV)

System type	Source water	Proposed rule	Final rule	
		ISCV (percent)	ISCV (percent)	95% confidence interval
CWS	GW	62.9	37.1	[33.1,40.8]
CWS	SW	68.4	52.6	[31.4,69.6]
NTNCWS	GW	62.9	25.2	[9.6,34.7]

Table III.C–8 compares our proposed and final national occurrence estimates to estimates from three other studies: the National Arsenic Occurrence Survey (NAOS) (Frey and Edwards, 1997), National Inorganics and Radionuclides Survey (NIRS) (Wade Miller Associates, 1992), and U.S. Geological Survey (USGS) (USGS, 2000). All of the studies in Table III.C–8 evaluated drinking water except for USGS, which evaluated ambient ground water, some of which came from non-drinking water sources. Wade Miller used surface water estimates from the 1978 Community Water System Survey, which we consider now to be out of date, so those estimates are not shown. Note that Frey and Edwards (1997) found significantly different occurrence distributions for small and large systems, so the NAOS

estimates are reported separately for small and large systems. The NAOS included samples from all 50 States, but it was a much smaller study (468 samples, compared to about 77,000 in our database), and it analyzed unfinished water samples. Frey and Edwards (1997) applied estimated efficiencies for the treatments known to be in place at the sampling locations, to predict the concentrations in finished water.

TABLE III.C–8.—COMPARISON OF NATIONAL ARSENIC OCCURRENCE ESTIMATES

Study	Type of water	System types	Population served	% of systems with mean arsenic exceeding concentrations (μg/L) of:				
				2	3	5	10	20
Ground Water Systems								
EPA-proposed	raw + finished	CWS	all	27.2	19.9	12.1	5.4	2.1
EPA-final	raw + finished	CWS	all	27.3	19.9	12.1	5.3	2.0
NAOS-small	finished [1]	PWS	≤10,000	23.5	NR	12.7	5.1	NR
NAOS-large	finished [1]	PWS	>10,000	28.8	NR	15.4	6.7	NR
NIRS	finished	CWS	all	17.4	11.9	6.9	2.9	1.1
USGS	raw	PWS	all	25.0	NR	13.6	7.6	3.1
Surface Water Systems								
EPA-proposed	finished	CWS	all	9.9	6.0	2.9	0.8	0.3
EPA-final	finished	CWS	all	9.8	5.6	3.0	0.8	0.3
NAOS-small	finished [1]	PWS	≤10,000	6.2	NR	1.8	0.0	NR
NAOS-large	finished [1]	PWS	>10,000	7.5	NR	1.3	0.6	NR

NR = not reported.
[1] Predicted from raw water, using estimated efficiency of treatment in place.

Table III.C–8 shows that our proposed and final occurrence estimates are only slightly different, with the possible exception of surface water occurrence estimates at 3 μg/L, where our estimate decreased from 6.0% to 5.6% exceedance for the final rule. The difference is explained by the identification and exclusion of samples of untreated water from our database for the final rule, as we described previously. For ground water, our estimates fall within the range reported in the other three studies. For surface water, our estimates are somewhat higher than those of the NAOS.

D. How Did EPA Revise its Risk Analysis?

1. Health Risk Analysis

a. Toxic forms of arsenic. Humans are exposed to many forms of arsenic that have different toxicities. For example, the metallic form of arsenic (0 valence) is not absorbed from the stomach and intestines and does not exert adverse effects. On the other hand, a volatile compound such as arsine (AsH_3) is toxic, but is not present in water or food. Moreover, the primary organic forms (arsenobetaine and arsenocholine) found in fish and shellfish seem to have little or no toxicity (Sabbioni *et al.,* 1991). Arsenobetaine quickly passes out of the body in urine without being metabolized to other compounds (Vahter, 1994). Little is known about the various arsenic species in vegetables, grains, and oils (NRC, 1999). Arsenite (+3) and arsenate (+5) are the most prevalent toxic forms of inorganic arsenic found in drinking water. In general, the inorganic forms of arsenic have been considered to be more toxic than the organic forms. In toxicity tests, the inorganic forms were reported to be more toxic than the organic forms (NAS, 1977) and the trivalent form was more toxic than the pentavalent one (Szinicz and Forth, 1988).

In animals and humans, inorganic pentavalent arsenic is converted to trivalent arsenic that is methylated (*i.e.,* chemically bonded to a methyl group, which is a carbon atom linked to three hydrogen atoms) to monomethyl arsenic (MMA) and dimethyl arsinic acid (DMA), which are organic arsenicals. The primary route of excretion for these four forms of arsenic is in the urine. The organic arsenicals MMA and DMA were once thought to be much less toxic than inorganic arsenicals. Many studies reported organic arsenicals to be less reactive in tissues, to kill less cells, and to be more easily excreted in urine (NRC, 1999). However, recent work has shown that the assumption that organic forms that arise during the metabolism of inorganic arsenic are less toxic than inorganic forms may not be correct (Aposhian *et al.,* 2000; Petrick *et al.,* 2000). One reason for this was that earlier toxicity tests were conducted using pentavalent MMA and DMA because it was believed that trivalent MMA(III) and DMA(III) were too transient to be found in urine. Recently, MMA(III) was isolated in human urine (Aposhian *et al.,* 2000). Tests have demonstrated that MMA(III) is more toxic to hepatocytes (*i.e.,* liver cells) that inorganic trivalent arsenic (Petrick *et al.,* 2000; Styblo *et al.,* 2000). These reports indicate that the metabolism of inorganic arsenic is not necessarily a detoxification process. As yet, it is not known which form of arsenic participates in the key events within cells that disrupt cell growth control and initiate or influence tumor formation. The SAB noted that ''[i]t is not possible to consider contributions of different forms of arsenic to the overall response based on the data that are available today'' (EPA, 2000q).

b. Effects of acute toxicity. Inorganic arsenic can exert toxic effects after acute (short-term) or chronic (long-term) exposure. From human acute poisoning incidents, the LD_{50} of arsenic has been estimated to range from 1 to 4 mg arsenic per kilogram (kg) of body weight (Vallee *et al.,* 1960, Winship, 1984). This dose would correspond to a lethal dose range of 70 to 280 mg for 50% of adults weighing 70 kg. At nonlethal, but high acute doses, inorganic arsenic can cause gastroenterological effects, shock, neuritis (continuous pain) and vascular effects in humans (Buchanan, 1962). Such incidents usually occur after accidental exposures. However, sometimes high dose acute exposures may be self-administered. For example, inorganic arsenic is a component of some herbal medicines and adverse effects have been reported after use. In one report of 74 cases (Tay and Seah, 1975), the primary signs were skin lesions (92%), neurological (*i.e.,* nerve) involvement (51%), and

gastroenterological, hematological (*i.e.,* blood) and renal (*i.e.,* kidney) effects (19 to 23%). Although acute or short-term exposures to high doses of inorganic arsenic can cause adverse effects, such exposures do not occur from U.S. public water supplies in compliance with the current MCL of 50 µg/L. EPA's drinking water regulation addresses the long-term, chronic effects of exposure to low concentrations of inorganic arsenic in drinking water.

c. Non-cancer effects associated with arsenic. A large number of adverse noncarcinogenic effects has been reported in humans after exposure to drinking water highly contaminated with inorganic arsenic. The earliest and most prominent changes are in the skin, *e.g.,* hyperpigmentation and keratoses (calus-like growths). Other effects that have been reported include alterations in gastrointestinal, cardiovascular, hematological (*e.g.,* anemia), pulmonary, neurological, immunological and reproductive/developmental function (ATSDR, 1998).

The most common symptoms of inorganic arsenic exposure appear on the skin and occur after 5–15 years of exposure equivalent to 700 µg/day for a 70 kg adult, or within 6 months to 3 years at exposures equivalent to 2,800 µg/day for a 70 kg adult (NRC, 1999, pg. 131). They include alterations in pigmentation and the development of keratoses that are localized primarily on the palms of the hands, the soles of the feet, and the torso. The presence of hyperpigmentation and keratoses on parts of the body not exposed to the sun is characteristic of arsenic exposure (Yeh, 1973; Tseng, 1977). The same alterations have been reported in patients treated with Fowler's solution (1% potassium arsenite; Cuzick *et al.,* 1982), used for asthma, psoriasis, rheumatic fever, leukemia, fever, pain, and as a tonic (WHO, 1981; NRC, 1999).

Chronic exposure to inorganic arsenic is often associated with alterations in gastrointestinal(GI) function. For example, noncirrhotic hypertension is a relatively specific, but not commonly found manifestation in inorganic arsenic-exposed individuals and may not become a clinical observation until the patient demonstrates GI bleeding (Morris *et al.,* 1974; Nevens *et al.,* 1990). Physical examination may reveal spleen and liver enlargement, and histopathological examination of tissue specimens may demonstrate periportal fibrosis (Morris *et al.,* 1974; Nevens *et al.,* 1990; Guha Mazumder *et al.,* 1997). There have been a few reports of cirrhosis after inorganic arsenic exposure, but the authors of these studies did not determine the subjects' alcohol consumption (NRC, 1999).

Development of peripheral vascular disease (hardening of the arteries to the arms and legs, that can cause pain, numbness, tingling, infection, gangrene, and clots) after inorganic arsenic exposure has also been reported. In Taiwan, blackfoot disease (BFD), a severe peripheral vascular insufficiency which may result in gangrene of the feet and other extremities) has been the most severe manifestation of this effect. Tseng (1977) reported over 1,000 cases of BFD in the arsenic study areas of Taiwan. Less severe cases of peripheral vascular disease have been described in Chile (Zaldivar *et al.,* 1974) and Mexico (Cebrian, 1987). In a Utah study, increased standardized mortality ratios (SMRs) for hypertensive heart disease were noted in both males and females after exposure to inorganic arsenic-contaminated drinking water (Lewis *et al.,* 1999). These reports link exposure to inorganic arsenic effects on the cardiovascular system. Although deaths due to hypertensive heart disease were roughly twice as high as expected in both sexes, increases in death did not relate to increases in dose, calculated as the years of exposure times the median arsenic concentration. The Utah data indicate that heart disease should be considered in the evaluation of potential benefits of U.S. regulation. Vascular effects have also been reported as an effect of arsenic exposure in another study in the U.S. (Engel *et al.,* 1994), in Taiwan (Wu *et al.,* 1989) and in Chile (Borgono *et al.,* 1977). The overall evidence indicating an association of various vascular diseases with arsenic exposure supports consideration of this endpoint in evaluation of potential noncancer health benefits of arsenic exposure reduction.

Studies in Taiwan (Lai *et al.,* 1994) and Bangladesh (Rahman *et al.,* 1998) found an increased risk of diabetes among people consuming arsenic-contaminated water. Two Swedish studies found an increased risk of mortality from diabetes among those occupationally exposed to arsenic (Rahman and Axelson, 1995; Rahman *et al.,* 1998).

Although peripheral neuropathy (numbness, muscle weakness, tremors; ATSDR, 1998) may be present after exposure to short-term, high doses of inorganic arsenic (Buchanan, 1962; Tay and Seah, 1975), there are no studies that definitely document this effect after exposure to levels of less than <50 µg/L of inorganic arsenic in drinking water. Hindmarsh et al. (1977) and Southwick et al. (1983) have reported limited evidence of peripheral neuropathy in Canada and the U.S., respectively, but it was not reported in studies from Taiwan, Argentina or Chile (Hotta, 1989, as cited by NRC 1999).

There have been a few, scattered reports in the literature that inorganic arsenic can affect reproduction and development in humans (Borzysonyi *et al.*, 1992; Desi *et al.*, 1992; Tabacova *et al.*, 1994; Hopenhayn-Rich *et al.*, 2000). After reviewing the available literature on arsenic and reproductive effects, the NRC (1999) wrote that ''nothing conclusive can be stated from these studies.'' Regarding the Hopenhayn-Rich study, the majority of the SAB panel (EPA, 2000q) concluded that while:

> it is generally reasonable to consider that children are generally at greater risk for a toxic response to any agent in water because of their greater drinking water consumption (on a unit-body weight basis), [the SAB does not] believe that this study demonstrates such a heightened sensitivity or susceptibility to arsenic.

The EPA agrees with this conclusion.

d. Cancers associated with arsenic. Inorganic arsenic is a multi-site human carcinogen by the drinking water route. Asian, Mexican and South American populations with exposures to arsenic in drinking water generally at or above hundreds of micrograms per liter are reported to have increased risks of skin, bladder, and lung cancer. The current evidence also suggests that the risks of liver and kidney cancer may be increased following exposures to inorganic forms of arsenic. The weight of evidence for ingested arsenic as a causal factor of carcinogenicity is much greater now than a decade ago, and the types of cancer occurring as a result of ingesting inorganic arsenic have even greater health implications for U.S. and other populations than the occurrence of skin cancer alone. (Until the late 1980s skin cancer had been the cancer classically associated with arsenic in drinking water.) Epidemiologic studies (human studies) provide direct data on arsenic risks from drinking water at exposure levels much closer to those of regulatory concern than environmental risk assessments based on animal toxicity studies.

Skin Cancer. Early reports linking inorganic arsenic contamination of drinking water to skin cancer came from Argentina (Neubauer, 1947, reviewing studies published as early as 1925) and Poland (Tseng *et al.*, 1968). However, the first studies that observed dose-dependent effects of arsenic associated with skin cancer came from Taiwan (Tseng *et al.*, 1968; Tseng, 1977). These studies focused EPA's attention on the health effects of ingested arsenic.

Physicians administered physical examinations to the study group of over 40,000 residents from 37 villages, as well as to a reference group of 7500 residents reported to be exposed to a median level of 0 to 0.017 mg/L arsenic (reference group). The study population was divided into three groups based on exposure to inorganic arsenic (0 to 0.29, 0.30 to 0.59 and ≥0.60 mg of inorganic arsenic per liter (mg/L) measured at the village level. A dose- and age-related increase of arsenic-induced skin cancer among the villagers was noted. No skin cancers were observed in the low arsenic reference areas. In both the EPA 1988 report on skin cancer and the 1999 NRC report, it was noted that grouping individuals into broad exposure groups (rather than grouping into village exposures) limited the usefulness of these studies for quantitative dose-response estimation. However, these Tseng reports and other corroborating studies such as those by Albores *et al.* (1979) and Cebrian *et al.* (1983) on drinking water exposure and exposures to inorganic arsenic in medicines (Cuzick *et al.*, 1982) and in pesticides (Roth, 1956) led the EPA, using skin cancer as the endpoint, to classify inorganic arsenic as a human carcinogen (Group A) by the oral route (EPA, 1984).

Internal cancers. Exposure to inorganic arsenic in drinking water has also been associated with the development of internal cancers. Chen *et al.* (1985) used SMRs to evaluate the association between ingested arsenic and cancer risk in Taiwan. (SMRs, ratios of observed to expected deaths from specific causes, are standardized to adjust for differences in the age distributions of the exposed and reference populations). The authors found statistically significant increased risks of mortality for bladder, kidney, lung, liver and colon cancers. A subsequent mortality study in the same area of Taiwan found significant dose-response relationships for deaths from bladder, kidney, skin, and lung cancers in both sexes and from liver and prostrate cancer for males. They also found increases in peripheral and cardiovascular diseases but not in cerebrovascular accidents (Wu *et al.*, 1989). There are several corroborating reports of the increased risk of cancers of internal organs from ingested arsenic including two from South American countries. In Argentina, significantly increased risks of death from bladder, lung and kidney cancer were reported (Hopenhayn-Rich *et al.*, 1996; 1998). In a population of approximately 400,000 in northern Chile, Smith *et al.* (1998) found significantly increased risks of bladder and lung cancer mortality.

There have only been a few studies of inorganic arsenic exposure via drinking water in the U.S., and most have not considered cancer as an endpoint. The best U.S. study currently available is that of Lewis *et al.* (1999) who conducted a mortality study of a population in Utah whose drinking water contained relatively low concentrations of arsenic. EPA scientists conducted an epidemiological study of 4,058 Mormons exposed to arsenic in drinking water in seven communities in Millard County, Utah (Lewis *et al.*, 1999). The 151 samples from their public and private drinking water sources had arsenic concentrations ranging from 4 to 620 µg/L with seven median (mid-point in range) community exposure concentrations of 14 to 166 µg/L. Observed causes of death in the study group (numbering 2,203) were compared to those expected from the same causes based upon death rates for the general white male and female population of Utah. While the study population males had a significantly higher risk of prostate cancer mortality, females had no significant excess risk of cancer mortality at any site. Millard County subjects had higher mortality from kidney cancer, but this was not statistically significant. Both males and females in the study group had less risk of bladder, digestive system and lung cancer mortality than the general Utah population. The Mormon females had lower death rates from breast and female genital cancers than the State rate. These decreased death rates were not statistically significant.

Tsai *et al.* (1999) estimated SMRs for 23 cancer and non-cancer causes of death in women and 27 causes of death in men in an area of Taiwan with elevated arsenic exposures. The SMRs in this study are an expression of the ratio between deaths that were observed in an area with elevated arsenic levels and those that were expected to occur, compared to both the mortality of populations in nearby areas without elevated arsenic levels and to the national population. Drinking water (250–1,140 µg/L) and soil (5.3–11.2 mg/kg) in the Tsai *et al.* (1999) population study had high arsenic content. However, the study gives an indication of the types of health effects that may be associated with arsenic exposure via drinking water. The study reports a high mortality rate (SMR > 3) for both sexes from bladder, kidney, skin, lung, and nasal cavity cancers and for vascular disease. Females also had high mortalities for laryngeal cancer.

The SMRs calculated by Tsai *et al.* (1999) used the single cause of death noted on the death certificates. Many chronic diseases, including some cancers, are not generally fatal. Consequently, the impact indicated by the SMR in this study may underestimate the total impact of these diseases. The causes of death reported in this study are consistent with what is known about the adverse effects of arsenic. Tsai *et al.* (1999) identified ''bronchitis, liver cirrhosis, nephropathy, intestinal cancer, rectal cancer, laryngeal cancer, and cerebrovascular disease'' as possibly ''related to chronic arsenic exposure via drinking water,'' which had not been reported before. In addition, people in the study area were observed to have nasal cavity and larynx cancers not caused by occupational exposure to inhaled arsenic.

A small cohort study in Japan of persons exposed to arsenic in drinking water provides evidence of the association of cancer and arsenic among persons exposed for 5 years to 1000 µg/L or more and followed for 33 years after cessation of exposure. The strongest association was for lung and bladder cancer, similar to results in studies in Taiwan and South America (Tsuda *et al.*, 1995).

Kurttio *et al.* (1999) conducted a case-cohort design study of 61 bladder and 49 kidney cancer cases and 275 controls to evaluate the risk of these diseases with respect to arsenic drinking water concentrations. In this study the median exposure was 0.1 µg/L, the maximum reported was 64 µg/L, and 1% of the exposure was greater than 10 µg/L. The authors reported that very low concentrations of arsenic in drinking water were significantly associated with bladder cancer when exposure occurred two to nine years prior to diagnosis. Arsenic exposure occurring greater than 10 years prior to diagnosis was not associated with bladder cancer risk. This raises a question about the significance of the finding about exposures two to nine years since one would expect earlier exposure to have had an effect given the Tsuda *et al.* (1995) study summarized previously.

The two internal cancers consistently seen and best characterized in epidemiologic studies are those of lung and bladder. EPA considers the studies summarized before as confirmation of its long-standing view that arsenic is a known human carcinogen. This rule relies on assessment of lung and bladder cancers for its quantitative risk estimates in support of the MCL. EPA recognizes that other internal cancers as well as skin cancer are important.

Nonetheless, some issues with other cancer endpoints led to their being considered qualitatively rather than quantitatively. EPA has considered skin and liver cancer qualitatively for the following reasons: (1) The skin cancer endpoint is difficult to analyze because, in the U.S., it is considered curable; and (2) the liver cancer endpoint is likely to have been influenced in Taiwan by the prevalence there of viral hepatitis which is a factor in liver cancer.

How does arsenic cause cancer? EPA sponsored an ''Expert Panel on Arsenic Carcinogenicity: Review and Workshop'' in May 1997 (EPA, 1997e). The panel evaluated existing data to comment on arsenic's carcinogenic mode of action and the effect on dose-response extrapolations. The panel noted that arsenic compounds have not formed deoxyribonucleic acid (DNA) adducts (*i.e.*, bound to DNA) nor caused point mutations. Thus, indications are that the mode of action does not involve direct reaction with DNA. Trivalent inorganic forms inhibit enzymes, but arsenite and arsenate do not affect DNA replication. The panel discussed several modes of action, concluding that arsenic indirectly affects DNA, inducing chromosomal changes. The panel thought that arsenic-induced chromosomal abnormalities could possibly come from errors in DNA repair and replication that affect gene expression; that arsenic may increase DNA hypermethylation and oxidative stress; that arsenic may affect cell proliferation (cell death appears to be nonlinear); and that arsenic may act as a co-carcinogen. Arsenite causes cell transformation but not mutation of cells in culture. It also induces gene amplification (multiple copies of DNA sequences) in a way that suggests interference with DNA repair or cell control instead of direct DNA damage.

In terms of implications for the risk assessment, the panel noted that risk per unit dose estimates from human studies can be biased either way (*i.e.*, reduced animal fats in the diet would underestimate risk). For the Taiwanese study, the ''* * * biases associated with the use of average doses and with the attribution of all increased risk to arsenic would both lead to an overestimation of risk (EPA, 1997e, page 31).'' While health effects are most likely observed in people getting high doses, the effects are assigned to the average dose of the exposure group. Thus, risk per unit dose estimated from the average doses would lead to an overestimation of risk (EPA, 1997e, page 31). On the other hand, basing risk estimates on one or two tumor sites may underestimate risk as compared to summing risks for all related health endpoints.

There is much research underway about the mode of action for arsenic. In order to understand the shape of the dose-response relationship in the range of exposure typical of the U.S., that is significantly below the range of observation of epidemiologic studies, one needs to identify which one or more of the possible modes of action is operative. If this can be elucidated, it will become possible to study and quantify the key events within cells that influence cell growth control and how they may quantitatively relate to eventual tumor incidence. Until then the shape of the dose-response relationship and whether there is any threshold cannot be known.

f. What is the quantitative relationship between exposure and cancer effects that may be projected for exposures in the U.S.? The Agency chose to make its quantitative estimates of risk based on the Chen *et al.* (1988; 1992) and Wu *et al.* (1989) Taiwan studies. This choice was endorsed by the NRC and EPA's SAB (EPA, 2000q; NRC, 1999). The database from Taiwan has the following advantages: mortality data were drawn from a cancer registry; arsenic well water concentrations were measured for each of the 42 villages; there was a large, relatively stable study population that had life-time exposures to arsenic; there are limited measured data for the food intake of arsenic in this population; age- and dose-dependent responses with respect to arsenic in the drinking water were demonstrated; the collection of pathology data was unusually thorough; and the populations were quite homogeneous in terms of lifestyle.

EPA recognizes that there are problems with the Taiwan study that introduce uncertainties to the risk analysis such as: the use of median exposure data at the village level; the low income and relatively poor diet of the Taiwanese study population (high levels of carbohydrates, low levels of protein, selenium and other essential nutrients); and high exposure to arsenic via food and cooking water. These are discussed more thoroughly in the following paragraphs. The available studies from Taiwan are ecological studies and have exposure uncertainties that are recognized. Ecological studies are problematic as bases for quantitative risk assessment. Errors in assigning persons to exposures are difficult to avoid. Moreover, all confounding factors that may have contributed to risk may not be adequately accounted for. These uncertainties have to be remembered since they lead to uncertainty in the quantitative dose-response relationship estimated in the observed range of data and in any extrapolation to estimate the potential risk at exposures significantly below the observed range. There is not a way to take all confounding factors into account quantitatively. (see section III.F.)

Notwithstanding these concerns, the Taiwan epidemiological studies provide the basis for assessing potential risk from lower concentrations of inorganic arsenic in drinking water, without having to adjust for cross-species toxicity interpretation. Ordinarily, the characteristics of human carcinogens can be explored and experimentally defined in test animals. Dose-response can be measured, and animal studies may identify internal transport, metabolism, elimination, and subcellular events that explain the carcinogenic process. Arsenic presents unique problems for quantitative risk assessment because there is no test animal species in which to study its carcinogenicity. While such studies have been undertaken, it appears that test animals do not respond to inorganic arsenic exposure in a way that makes them useful as a model for human cancer assessment. Their metabolism of inorganic arsenic is also quantitatively different than humans.

There are issues with the extrapolation of the dose-response from the observed range of exposure in Taiwan to estimate Taiwan cancer risk below the observed data range and application of the same risk estimate to U.S. populations. The following issues have been addressed:

- The Taiwan population ingested more arsenic in food and via cooking with contaminated water than is typical for the U.S. population. This is because the staples of the Taiwan diet were rice and sweet potatoes. Rice and sweet potatoes are high in arsenic and both staples absorb water upon cooking. EPA did a sensitivity analysis of the effect of exposure to arsenic through water used in preparing food in Taiwan. EPA also analyzed the effect of exposure to arsenic through food.
- The Taiwan data on exposure were uncertain because the association of individuals with contaminated wells was made by grouping persons in a village and assuming they had a lifetime of exposure to the median of the concentration of arsenic measured in the wells serving that village. Wells within each village had varying arsenic levels so that people using certain wells had much higher exposures than others in the same village. Not all wells serving all villages were measured. However, all villagers were assigned a single median

concentration for exposure. In addition, moves made from village to village were not accounted for. When villages with only one arsenic measurement were removed from the data set (on the theory that the exposure data were too uncertain), or when village means instead of medians were used for the exposure estimates, there was no statistically significant change in the estimated point of departure, using Model 1 of Morales et al. (2000).

- The Taiwan population was a rural population that was not well nourished, having deficits of selenium, possibly methionine or choline (methyl donors), zinc and other essential nutrients. This malnourishment is not typical of the U.S. population, although some U.S. populations may have one or another of the same deficits. The Taiwanese population may also have some genetic differences from the general U.S. population. These issues cannot be quantitatively accounted for. However, deficits in selenium in the diet, in particular, are a known risk factor for cancer and indicate possible overestimation of risk when the Taiwan data are applied. EPA has qualitatively taken this into account. (See section III.F.)
- The Utah study (Lewis et al., 1999) did not find any excess bladder or lung cancer risk after exposure to arsenic at concentrations of 14 to 166 µg/L. An important feature of the study is that it estimated excess risk by comparing cancer rates among the study population, in Millard County, Utah to background rates in all of Utah. But the cancer rates observed among the study population, even those who consumed the highest levels of arsenic, were lower, in many cases significantly lower, than in all of Utah. This is evidence that there are important differences between the study and comparison populations besides their consumption of arsenic. One such difference is that Millard County is mostly rural, while Utah as a whole contains some large urban populations. Another difference is that the subjects of the Utah study were all members of the Church of Jesus Christ of Latter Day Saints, who for religious reasons have relatively low rates of tobacco and alcohol use. For these reasons, the Agency believes that the comparison of the study population to all of Utah is not appropriate for estimating excess risks. An alternative method of analysis is to compare cancer rates only among people within the study population who had high and low exposures. The Agency performed such an analysis on the Utah data, using the statistical technique of Cox proportional hazard regression (US EPA, 2000x; Cox and Oakes, 1984). The results showed no detectable increased risk of lung or bladder cancers due to arsenic, even among subjects exposed to more than 100 µg/L on average. On the other hand, the excess risk could also not be distinguished statistically from the levels predicted by model 1 of Morales et al. (2000). What these results show is that the Utah study is not powerful enough to estimate excess risks with enough precision to be useful for the Agency's arsenic risk analysis. Furthermore, the SAB noted that ''(a)lthough the data provided in published results of the Lewis, et al., 1999 study imply that there was no excess bladder or lung cancer in this population, the data are not in a form that allows dose-response to be assessed dependably'' (EPA, 2000q). The indications of Lewis et al. study have been taken into account in the judgments of the impact of scientific uncertainties on the final MCL.

g. Is it appropriate to assume linearity for the dose-response assessment for arsenic at low doses given that arsenic is not directly reactive with DNA? Independent scientific panels (EPA, 2000q; NRC, 1999; EPA, 1997e; EPA, 1988) who have considered the Taiwan study have raised the caution that using the Taiwan study to estimate U.S. risk at lower levels may result in an overly conservative estimation of U.S. risk. The independent panels have each said that below the observed range of the high level of contamination in Taiwan the shape of the dose-response relationship may prove to be sublinear when there is adequate data to characterize the mode of action. If so, an assumption that the effects seen per dose increment remain the same from high to low levels of dose may overstate the U.S. risk. In evaluating the benefits of alternative MCLs, EPA weighed both the qualitative and quantitative uncertainties about risk magnitude (see section III.F.)

The use of a linear procedure to extrapolate from a higher, observed data range to a lower range beyond observation is a science policy approach that has been in use by Federal agencies for four decades. Its basis is both science and policy. The policy objectives are to avoid underestimating risk in order to protect public health and be consistent and clear across risk assessments. The science components include its applicability to generally available data sets (animal tests and human studies) and its basis in the fact that cancer is a consequence of genetic changes coupled with the assumption that direct reaction with DNA is a basic mode of action for chemicals causing important genetic changes (Cogliano et al., eds., 1999).

The linear approach is intended to identify a level of risk that is an upper limit on what the risk might be. There are two biological situations in which the linear approach can be a particularly uncertain estimate of risk. One is when the metabolism and toxicokinetics of the agent being assessed cause a nonlinear relationship between the dose of the active form and the dose of the applied form of the agent. If this is not quantitatively dealt with in the dose part of the dose-response estimation, the linear extrapolation will have added uncertainties. In the case of arsenic, it is known that metabolism and toxicokinetics are complex, but the active form(s) is not known. The resulting complexities of estimating dose cannot, therefore, be accounted for in dose-response modeling.

The other situation is when the mode of action of the agent is indirect; that is, when there is not a one-to-one reaction between the active form of the agent and DNA, but, instead, the active form affects other cell components or processes that, in turn, causes genetic change. In such cases, the rates of these secondary processes are limiting, not the dose of the active form. With few exceptions, the rates of these secondary processes are thought not to be a linear function of applied dose. In the case of arsenic, it is known that arsenic does cause genetic changes in short-term tests, but these are indirect genetic changes (not one-to-one reactions between arsenic and DNA).

If there are both complex toxicokinetics and secondary effects, the upper-limit risk estimate from the linear approach provides may be overly conservative. However, there simply are not sufficient data to quantify the effect of these two features of arsenic on risk. While some commenters assert that the Agency can simply use models that have sublinear structures to address the issue of secondary nature of effects, the Agency does not agree. There are no data on the effects of arsenic that may be precursors to cancer. Without such biological data, the exercise of blindly applying models has no anchor, in EPA's judgment. Such modeled extrapolations could take numerous shapes and there is no way to decide how shallow or steep the curve would be or where on the dose gradient the zero risk level might be, given the hundreds of possibilities. There are also certain modes of action that do not involve DNA reactivity, but are thought to be linear in dose response, such as effects on growth-control signals within cells. Since we do not know what the mode of action of arsenic is, we cannot in fact rule out linearity. Therefore, in

accordance with the 1986 cancer guidelines, and subsequent guidance discussed later, the Agency cannot reasonably use anything other than a linear mode of action to estimate the upper bound of risk associated with arsenic exposure. Nevertheless, the uncertainties about both of these facets (the toxicokinetics and secondary effects) of risk estimation have been taken into account qualitatively in the Agency's final decision as a perspective on the linear dose-response estimation (see section III.F.).

The Agency considered mode-of-action information as a basis for departing from the assumption of linearity and in the process, developed a framework for judging the adequacy of mode of action data (EPA, 1996a). This framework has been reviewed and supported by the SAB (EPA, 1997f; EPA, 1999g). The framework was applied to the assessment of chloroform (EPA, 2000d).

In order to decide whether a particular mode of action is operative for an agent, the database on mode of action must be rich and able to both describe the sequence of key events in the putative mode of action and demonstrate it experimentally. The elements of the framework analysis include:

- Summary description of postulated mode of action (the postulated sequence of cellular/physiological events leading to cancer must be described.)
- Identification of key events (the specific events that are key to carcinogenesis must described in order to be experimentally examined.)
- Strength, consistency, specificity of association (the experimental observation of the key events and their relationship to tumor development must be described.)
- Dose-response relationship (the dose-response relationship between the key events and tumor incidence must be described and evaluated.)
- Temporal relationship (the key events must be shown to precede tumor development.)
- Biological plausibility and coherence (the postulated mode of action and the data must be in accord with general, accepted scientific evidence about the causes of cancer.)
- Other modes of action (alternative modes of action that are suggested must be examined and their contribution, if any, described.)
- Conclusion (an overall conclusion is made as to whether the postulated mode of action is accurate given the results of evaluation of the evidence under the previous elements.)
- Human relevance, including subpopulations (if the evidence of mode of action of carcinogenicity is from animal studies, its human relevance is examined.)

In the case of chloroform, there was sufficient information to describe key events and undertake mode of action analysis. In the case of arsenic, the postulated mode of action cannot be specifically described, the key events are unknown, and no analysis of the remaining elements of the mode of action framework can be made. Several possible influences of arsenic on the carcinogenic process have been postulated, but there are insufficient experimental data either to show that any one of the possible modes is the influence actually at work or to test the dimensions of its influence as the framework requires.

For chloroform there are extensive data on metabolism that identify the likely active metabolite. The key events—cell toxicity followed by sustained cell proliferation and eventually tumor effects—have been extensively studied in many experiments. The key events have been empirically demonstrated to precede and consistently be associated with tumor effects. In sum, a very large number of studies have satisfied the requirements of the framework analysis. By contrast, the arsenic database fails to even be able to satisfy the first element of the framework; the key events are unknown. While there are a number of possible modes of action implied by existing data, none of them has been sufficiently studied to be analyzed under the Agency's framework. For this reason the comparison of the ''best available, peer reviewed data'' for arsenic and chloroform shows quite different results. There are not sufficient data on arsenic to describe a mode of action as there were for chloroform. This was also the conclusion of the SAB review of arsenic (EPA, 2000q).

Overall, the NRC and SAB reports agreed that the best available science provides no alternative to use of a linear dose-response process for arsenic because a specific mode (or modes) of action has not been identified. Unlike chloroform, the Agency lacks sufficient available, peer-reviewed information on arsenic to estimate quantitatively a non-linear mode of action. The Agency thus has decided not to depart from the assumption of linearity in selecting an MCLG of zero.

2. Risk factors/bases for upper- and lower-bound analyses

EPA calculated upper- and lower-bound risk estimates for the U.S. population exposed to arsenic concentrations. The approach for this analysis included five components. First, we developed relative exposure factor distributions, which incorporate data from the recent EPA water consumption study with age, sex, and weight data. Second, the Agency calculated the arsenic occurrence distributions for the population exposed to arsenic levels above 3 µg/L. Third, we chose risk distributions for bladder and lung cancer for the analysis from Morales et al. (2000). Fourth, EPA developed estimates of the projected bladder and lung cancer risks faced by exposed populations using Monte-Carlo simulations, bringing together the relative exposure factor, occurrence, and risk distributions. These simulations resulted in upper bound estimates of the risks faced by U.S. populations exposed to arsenic concentrations at or above 3 µg/L in their drinking water. Finally, EPA made adjustments to the lower-bound risk estimates to reflect exposure to arsenic in cooking water and in food in Taiwan. A more detailed description of the risk methodology is provided in Appendix B of the Economic Analysis (EPA, 2000o).

a. Water consumption. EPA recently updated its estimates of per capita daily average water consumption (EPA, 2000c). The estimates used data from the combined 1994, 1995, and 1996 Continuing Survey of Food Intakes by Individuals (CSFII), conducted by the U.S. Department of Agriculture (USDA). The CSFII is a complex, multi-stage area probability sample of the entire U.S. and is conducted to survey the food and beverage intake of the U.S. Per capita water consumption estimates are reported by source. Sources include community tap water, bottled water, and water from other sources, including water from household wells and rain cisterns, and household and public springs. For each source, the mean and percentiles of the distribution of average daily per capita consumption are reported. The estimates are based on an average of 2 days of reported consumption by survey respondents. The estimated mean daily average per capita consumption of ''community tap water'' by individuals in the U.S. population is 1 liter/person/day. For ''total water'', which includes bottled water, the estimated mean daily average per capita consumption is 1.2 liters per/person/day. These estimates of water consumption are based on a sample of 15,303 individuals in the 50 States and the District of Columbia. The sample was selected to represent the entire

population of the U.S. based on 1990 census data.

The estimated 90th percentile of the empirical distribution of daily average per capita consumption of community tap water for the U.S. population is 2.1 liters/person/day; the corresponding number for the 90th percentile of daily average per capita consumption of total water is 2.3 liters/person/day. In other words, current consumption data indicate that 90% of the U.S. population consumes approximately 2 liters/person/day, or less.

Water consumption estimates for selected subpopulations in the U.S. are described in the CSFII, including per capita water consumption by source for gender, region, age categories, economic status, race, and residential status and separately for pregnant women, lactating women, and women in childbearing years. The water consumption estimates by age and sex were used in the computation of the relative exposure factors discussed later.

b. Relative Exposure Factors. Lifetime male and female relative exposure factors (REFs) for each of the broad age categories used in the water consumption study were calculated, where the life-long REFs indicate the sensitivity of exposure to an individual relative to the sensitivity of exposure of an ''average'' person weighing 70 kilograms and consuming 2 liters of water per day, a ''high end'' water consumption estimate according to the EPA water consumption study referred to previously (EPA, 2000c). In these calculations, EPA combined the water consumption data with data on population weight from the 1994 Statistical Abstract of the U.S. Distributions for both community tap water and total water consumption were used because the community tap water estimates may underestimate actual tap water consumption. The weight data included a mean and a distribution of weight for male and females on a year-to-year basis. The means and standard deviations of the life-long REFs derived from this analysis are shown in Table III.D–1.

TABLE III.D–1.—LIFE-LONG RELATIVE EXPOSURE FACTORS

	Community water consumption data	Total water consumption data
Male	Mean = 0.60	Mean = 0.73
	s.d. = 0.61	s.d. = 0.62
Female	Mean = 0.64	Mean = 0.79
	s.d. = 0.6	s.d. = 0.61

c. Arsenic occurrence. EPA recently updated its estimates of arsenic occurrence, and calculated separate occurrence distributions for arsenic found in ground water and surface water systems. These occurrence distributions were calculated for systems with arsenic concentrations of 3 µg/L or above. Arsenic occurrence estimates are described in more detail in section III.C.

d. Risk distributions. In its 1999 report, ''Arsenic in Drinking Water,'' the NRC analyzed bladder cancer risks using data from Taiwan. In addition, NRC examined evidence from human epidemiological studies in Chile and Argentina, and concluded that risks of bladder and lung cancer had comparable risks to those ''in Taiwan at comparable levels of exposure'' (NRC, 1999). The NRC also examined the implications of applying different statistical analyses to the newly available Taiwanese data for the purpose of characterizing bladder cancer risk. While the NRC's work did not constitute a formal risk analysis, they did examine many statistical issues (*e.g.,* measurement errors, age-specific probabilities, body weight, water consumption rate, comparison populations, mortality rates, choice of model) and provided a starting point for additional EPA analyses. The report noted that ''poor nutrition, low selenium concentrations in Taiwan, genetic and cultural characteristics, and arsenic intake from food'' were not accounted for in their analysis (NRC, 1999, pg. 295). In the June 22, 2000 proposed rule, EPA calculated bladder cancer risks and benefits using the bladder cancer risk analysis from the NRC report (NRC, 1999). We also estimated lung cancer benefits in a ''What If'' analysis based on the statement in the 1999 NRC report that ''some studies have shown that excess lung cancer deaths attributed to arsenic are 2–5 fold greater than the excess bladder cancer deaths'' (NRC, 1999).

In July, 2000, a peer reviewed article by Morales *et al.* (2000) was published, which presented additional analyses of bladder cancer risks as well as estimates of lung and liver cancer risks for the same Taiwanese population analyzed in the NRC report. EPA summarized and analyzed the new information from the Morales *et al.* (2000) article in a NODA published on October 20, 2000 (65 FR 63027; EPA, 2000m). Although the data used were the same as used by the NRC to analyze bladder cancer risk in their 1999 publication, Morales *et al.* (2000) considered more dose-response models and evaluated how well they fit the Taiwanese data for both bladder cancer risk and lung cancer risk. Ten risk models were presented in Morales *et al.* (2000) used with and without one of two comparison populations. After consultation with the primary authors (Morales and Ryan), EPA chose Model 1 with no comparison population for further analysis.

EPA believes that the models in Morales *et al.* (2000) without a comparison population are more reliable than those with a comparison population. Models with no comparison population estimate the arsenic dose-response curve only from the study population. Models with a comparison population include mortality data from a similar population (in this case either all of Taiwan or part of southwestern Taiwan) with low arsenic exposure. Most of the models with comparison populations resulted in dose-response curves that were supralinear (higher than a linear dose response) at low doses. The curves were ''forced down'' near zero dose because the comparison population consists of a large number of people with low risk and low exposure. EPA believes, based on discussions with the authors of Morales *et al.* (2000), that models with a comparison population are less reliable, for two reasons. First, there is no basis in data on arsenic's carcinogenic mode of action to support a supralinear curve as being biologically plausible. To the contrary, the conclusion of the NRC panel (NRC, 1999) was that the mode of action data led one to expect dose responses that would be either linear or less than linear at low dose. However, the NRC indicated that available data are inconclusive and '' * * * do not meet EPA's 1996 stated criteria for departure from the default assumption of linearity.'' (NRC, 1999)

Second, models that include comparison populations assume that the study and comparison populations are the same in all important respects except for arsenic exposure. Yet Morales *et al.* (2000) agree that ''[t]here is reason to believe that the urban Taiwanese population is not a comparable population for the poor rural population used in this study.'' Moreover, because of the large amount of data in the comparison populations, the model results are sensitive to assumptions about this group. Evidence that supports these arguments are that the risks in the comparison groups are substantially lower than in similarly exposed members of the study group and the shape of the estimated dose-response changes sharply as a result. For these reasons, EPA believes that the models without comparison populations are more reliable than those with them. Of the models that did not include a comparison population, EPA believes that Model 1 best fits the data, based on the Akaike Information Criterion (AIC), a standard criterion of model fit, applied to Poisson models. In Model 1, the relative risk of mortality at any time is assumed to increase exponentially with a linear function of dose and a quadratic function of age.

Morales *et al.* (2000) reported that two other models without comparison populations also fit the Taiwan data well: Model 2, another Poisson model with a nonparametric instead of quadratic age effect, and a multi-stage Weibull (MSW) model. Under Model 2, the points of departure for male and female bladder and lung cancer are from 1% to 11% lower than under Model 1, but within the 95% confidence bounds from Model 1. Model 2 therefore implies essentially the same bladder and lung cancer risks as Model 1. Under the MSW model, compared to Model 1, points of departure are 45% to 60% higher for bladder cancer and for female lung cancer, and 38% lower for male lung cancer. EPA did not consider the MSW model for further analysis, because this model is more sensitive to the omission of individual villages (Morales *et al.*, 2000) and to the grouping of responses by village (NRC, 1999), as occurs in the Taiwanese data. However, if the MSW model were correct, it would imply a 14% lower combined risk of lung and bladder cancers than Model 1, among males and females combined.

Considering all of these results, the Agency decided that the more exhaustive statistical analysis of the data provided by Morales *et al.* (2000), as analyzed by EPA, would be the basis for the new risk calculations for the final rule (with further consideration of additional risk analyses) and other pertinent information. The Agency views the results of the alternative models described above as an additional uncertainty which was considered in the decision concerning the selection of the final MCL (see section III.F. of today's preamble).

e. Estimated risk reductions. Estimated risk reductions for bladder and lung cancer at various MCL levels were developed using Monte-Carlo simulations. Monte-Carlo analysis is a technique for analyzing problems where there are a large number of combinations of input values which makes it impossible to calculate every possible result. A random number generator is used to select input values from pre-defined distributions. For each set of random numbers, a single scenario's result is calculated. As the simulation runs, the model is recalculated for each new scenario that continues until a stopping criteria is reached. These simulations combined the distributions of relative exposure factors (REFs), occurrence at or above 3 µg/L, and risks of bladder and lung cancer taken from the Morales *et al.* (2000) article. The simulations resulted in upper-bound estimates of the actual risks faced by populations exposed to arsenic concentrations at or above 3 µg/L in their drinking water.

f. Lower-bound analyses. Two adjustments were made to the risk distributions resulting from the simulations described previously, reflecting uncertainty about the actual arsenic exposure in the Taiwan study area. First, the Agency made an adjustment to the lower bound risk estimates to take into consideration the effect of exposure to arsenic through water used in preparing food in Taiwan. The Taiwanese staple foods were dried sweet potatoes and rice (Wu *et al.*, 1989). Both the 1988 EPA ''Special Report on Ingested Inorganic Arsenic'' report (EPA,1988) and the 1999 NRC report assumed that an average Taiwanese male weighed 55 kg and drank 3.5 liters of water daily, and that an average Taiwanese female weighed 50 kg and drank 2 liters of water daily. Using these assumptions, along with an assumption that Taiwanese men and women ate one cup of dry rice and two pounds of sweet potatoes a day, the Agency re-estimated risks for bladder and lung cancer, using one additional liter water consumption for food preparation (*i.e.*, the water absorbed by hydration during cooking). This adjustment was discussed and used in the October 20, 2000 NODA (65 FR 63027; EPA, 2000m).

Second, an adjustment was made to the lower-bound risk estimates to take into consideration the relatively high arsenic concentration in the food consumed in Taiwan as compared to the U.S. The food consumed daily in Taiwan contains about 50 µg of arsenic, versus about 10 µg in the U.S. (NRC, 1999, pp. 50–51). Thus the total consumption of inorganic arsenic (from food preparation and drinking water) is considered, per kilogram of body weight, in the process of these adjustments. To carry them out, the relative contribution of arsenic in the drinking water that was consumed as drinking water, on a µg arsenic per kilogram body weight per day (µg/kg/day) basis, was compared to the total amount of arsenic consumed in drinking water, drinking water used for cooking, and in food, on a µg/kg/day basis.

Other factors contributing to lower bound uncertainty include the possibility of a sub-linear dose-response curve below the point of departure. The NRC noted ''Of the several modes of action that are considered most plausible, a sub-linear dose response curve in the low-dose range is predicted, although linearity cannot be ruled out.'' (NRC, 1999). The recent Utah study (Lewis *et al.*, 1999), described in section V.G.1(b), provides some evidence that the shape of the dose-response curve may well be sub-linear at low doses. Because sufficient mode of action data were not available, an adjustment was not made to the risk estimates to reflect the possibility of a sub-linear dose-response curve. Additional factors contributing to uncertainty include the use of village well data rather than individual exposure data, deficiencies in the Taiwanese diet relative to the U.S. diet (selenium, choline, etc.), and the baseline health status in the Taiwanese study area relative to U.S. populations. The Agency did not make adjustments to the risk estimates to reflect these uncertainties because applicable peer-reviewed, quantitative studies on which to base such adjustments were not available.

Estimated risk levels for bladder and lung cancer combined at various MCL levels are shown in Tables III.D–2(a-c). The risk estimates without adjustments for exposure uncertainty through cooking water and food are shown Table III.D–2 (a). These estimates incorporate occurrence data, water consumption data, and male and female risk estimates. Lower bounds show estimates using community water consumption data; upper bounds show estimates using total water consumption data. Table III.D–2 (b) shows estimated risk

levels for bladder and lung cancer combined at various MCL levels with adjustments for exposure uncertainty through cooking water and food. These estimates incorporate occurrence data, water consumption data, and male risk estimates, with lower bounds reflecting community water consumption data and upper bounds reflecting total water consumption data. There are no adjustments for other factors which contribute to uncertainty, such as the use of village well data as opposed to individual exposure data. Tablet III.D–2 (c) is a combination of Table III.D–2(a) and Table III.D–2 (b), with the lower bounds taken from Table III.D–3 (b), and the upper bounds taken from Table III.D–2 (a). Thus Table III.D–2(c) reflects the range of estimates before and after the exposure uncertainty adjustments for cooking water and for food, along with the incorporation of water consumption data, occurrence data, and cancer risk estimates. These estimates were used to estimate the range of potential cases avoided at the various MCL levels.

The lower-bound risk estimates in Tables III.D–2(a-c) reflect the following:

—The community (tap) water consumption from the EPA water consumption study (EPA, 2000c)

—The occurrence distributions of arsenic in U.S. ground and surface water systems

—Male risk estimates from Morales *et al.* (2000)

—Arsenic exposure from cooking water in Taiwan

—Arsenic exposure from food in Taiwan

The upper-bound risk estimates in Tables III.D–2(a-c) reflect the following:

—The total water consumption estimates from the EPA water consumption study (EPA, 2000c)

—The occurrence distributions of arsenic in U.S. ground and surface water systems

—Male and female risk estimates from Morales *et al.* (2000)

TABLE III.D–2(a).—CANCER RISKS FOR U.S. POPULATIONS EXPOSED AT OR ABOVE MCL OPTIONS, AFTER TREATMENT [1,2]

[without adjustment for arsenic in food and cooking water]

MCL (μg/L)	Mean exposed population risk	90th percentile exposed population risk
3	$0.93–1.25 \times 10^{-4}$	$1.95–2.42 \times 10^{-4}$
5	$1.63–2.02 \times 10^{-4}$	$3.47–3.9 \times 10^{-4}$
10	$2.41–2.99 \times 10^{-4}$	$5.23–6.09 \times 10^{-4}$
20	$3.07–3.85 \times 10^{-4}$	$6.58–8.37 \times 10^{-4}$

[1] Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume that the probability of illness from arsenic exposure in the U.S. is equal to the probability of death from arsenic exposure among the arsenic study group.
[2] The estimated risks are male and female risks combined.

TABLE III.D–2(B).—CANCER RISKS FOR U.S. POPULATIONS EXPOSED AT OR ABOVE MCL OPTIONS, AFTER TREATMENT 1, 2

[without adjustment for arsenic in food and cooking water]

MCL (μg/L)	Mean exposed population risk	90th percentile exposed population risk
3	$0.11–0.13 \times 10^{-4}$	$0.22–0.26 \times 10^{-4}$
5	$0.27–0.32 \times 10^{-4}$	$0.55–0.62 \times 10^{-4}$
10	$0.63–0.76 \times 10^{-4}$	$1.32–1.54 \times 10^{-4}$
20	$1.1–1.35 \times 10^{-4}$	$2.47–2.89 \times 10^{-4}$

[1] Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume that the probability of illness from arsenic exposure in the U.S. is equal to the probability of death from arsenic exposure among the arsenic study group.
[2] The estimated risks are for males.

TABLE III.D–2(c).—CANCER RISKS FOR U.S. POPULATIONS EXPOSED AT OR ABOVE MCL OPTIONS, AFTER TREATMENT [1,2]

[lower bound with food and cooking water adjustment, upper bound withough food and cooking water adjustment]

MCL (μg/L)	Mean exposed population risk	90th percentile exposed population risk
3	$0.11–1.25 \times 10^{-4}$	$0.22–2.42 \times 10^{-4}$
5	$0.27–2.02 \times 10^{-4}$	$0.55–3.9 \times 10^{-4}$
10	$0.63–2.99 \times 10^{-4}$	$1.32–6.09 \times 10^{-4}$
20	$1.1–3.85 \times 10^{-4}$	$2.47–8.37 \times 10^{-4}$

[1] Actual risks could be lower, given the various uncertainties discussed, or higher, as these estimates assume that the probability of illness from arsenic exposure in the U.S. is equal to the probability of death from arsenic exposure among the arsenic study group.

g. Cases avoided. The lower and upper bound risk estimates from Table III.D–2(c) were applied to the exposed population to generate cases avoided for CWSs serving less than a million customers. Because the actual arsenic occurrence was known for the very large systems (those serving over a million customers), their system-specific arsenic occurrence distributions could be directly computed. The system-specific arsenic distributions allowed direct calculation of avoided cancer cases. The process, described in detail in the Economic Analysis (EPA, 2000o), utilizes the same risk estimates from Morales et al. (2000) that were used in deriving the number of cases avoided in smaller CWSs. Cases avoided for NTNCWSs were also computed separately, utilizing factors developed to

account for the intermittent nature of the exposure. These factors are described in the Economic Analysis.

An upper-bound adjustment was made to the number of bladder cancer cases avoided to reflect a possible lower mortality rate in Taiwan than was assumed in the risk assessment process described earlier. We also made this adjustment in the June 22, 2000 proposal. In the Taiwan study area, information on arsenic-related bladder and lung cancer deaths was reported. In order to use these data to determine the probability of contracting bladder and lung cancer as a result of exposure to arsenic, a probability of mortality, given the onset of arsenic-induced bladder and lung cancer among the Taiwanese study population, must be assumed. The study area in Taiwan is a section where arsenic concentrations in the water are very high by comparison to those in the U.S., and an area of low incomes and poor diets, where the availability and quality of medical care is not of high quality, by U.S. standards. In its estimate of bladder cancer risk, the Agency assumed that within the Taiwanese study area, the probability of contracting bladder cancer was relatively close to the probability of dying from bladder cancer (i.e., that the bladder cancer incidence rate was equal to the bladder cancer mortality rate).

We do not have data on the rates of survival for bladder cancer in the Taiwanese villages in the study at the time of data collection. We do know that the relative survival rates for bladder cancer in developing countries overall ranged from 23.5% to 66.1% in 1982–1992 (WHO, 1998). We also have some information on annual bladder cancer mortality and incidence for the general population of Taiwan in 1996. The age-adjusted annual incidence rates of bladder cancer for males and females, respectively, were 7.36 and 3.09 per 100,000, with corresponding annual mortality rates of 3.21 and 1.44 per 100,000 (correspondence from Chen to Herman Gibb, January 3, 2000). Assuming that the proportion of males and females in the population is equal, these numbers imply that the mortality rate for bladder cancer in the general population of Taiwan, at present, is 45%. Since survival rates have most likely improved over the years since the original Taiwanese study, this number represents a lower bound on the survival rate for the original area under study (*i.e.*, one would not expect a higher rate of survival in that area at that time). This has implications for the bladder cancer risk estimates from the Taiwan data. If there were any persons with bladder cancer who recovered and died from some other cause, then our estimate underestimated risk; that is, there were more cancer cases than cancer deaths. Based on the previous discussion, we think bladder cancer incidence could be no more than two-fold bladder cancer mortality; and that an 80% mortality rate would be plausible. Thus, we have adjusted the upper bound of cases avoided, which is used in the benefits analysis, to reflect a possible mortality rate for bladder cancer of 80 percent. Because lung cancer mortality rates are quite high, about 88% in the U.S. (EPA, 1998n), the assumption was made that all lung cancers in the Taiwan study area resulted in fatalities.

The total number of bladder and lung cases avoided at each MCL is shown in Table III.D–3. These cases avoided include CWSs and NTNCWSs cases. The number of bladder and lung cancer cases avoided ranges from 57.2 to 138.3 at an MCL of 3 μg/L, 51.1 to 100.2 at an MCL of 5 μg/L, 37.4 to 55.7 at an MCL of 10 μg/L, and 19.0 to 19.8 at an MCL of 20 μg/L. The cases avoided were divided into premature fatality and morbidity (*i.e.,* illness) cases based on U.S. mortality rates. In the U.S. approximately one out of four individuals who is diagnosed with bladder cancer actually dies from bladder cancer. The mortality rate for the U.S. is taken from a cost of illness study recently completed by EPA (EPA, 1999j). For those diagnosed with bladder cancer at the average age of diagnosis (70 years), the probability for dying of that disease during each year post-diagnosis was summed over a 20-year period to obtain the value of 26 percent. Mortality rates for U.S. bladder cancer patients have decreased overall by 24% from 1973 to 1996. For lung cancer, mortality rates are much higher. The comparable mortality rate for lung cancer in the U.S. is 88% (EPA, 1998n).

TABLE III.D–3.—ANNUAL TOTAL (BLADDER AND LUNG) CANCER CASES AVOIDED FROM REDUCING ARSENIC IN CWSS AND NTNCWS

Arsenic level (μg/L)	Reduced mortality cases[1]	Reduced morbidity cases[1]	Total cancer cases avoided
3	32.6–74.1	24.6–64.2	57.2–138.3
5	29.1–53.7	22.0–46.5	51.1–100.2
10	21.3–29.8	16.1–25.9	37.4–55.7
20	10.2–11.3	8.5–8.8	19.0–19.8

[1] Based on U.S. mortality rates given in the text.

3. Sensitive Subpopulations

The 1996 SDWA amendments include specific provisions in section 1412(b)(3)(C)(i)(V) that require EPA to assess the effects of a contaminant not just on the general population but on groups within the general population such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population. The NRC subcommittee noted that there is a marked variation in susceptibility to arsenic-induced toxic effects that may be influenced by factors such as genetic polymorphisms (especially in metabolism), life stage at which exposures occur, sex, nutritional status, and concurrent exposures to other agents or environmental factors. The NRC report concluded that there is insufficient scientific information to permit separate cancer risk estimates for potential subpopulations such as pregnant women, lactating women, and children and that factors that influence sensitivity to or expression of arsenic-associated cancer and noncancer effects need to be better characterized. EPA agrees with the NRC that there is not enough information to make risk conclusions on any specific subpopulations.

4. Risk Window

EPA has historically considered 10^{-4} to 10^{-6} as a target risk range protective of public health in its drinking water program. However, the risk-range

represents a policy goal for EPA, and is not a statutory factor in setting an MCL. Note that the procedure EPA uses to estimate such risks provides an upper-bound estimate. In the case of arsenic, EPA performed a benefit-cost analysis as required by the statute. This analysis is discussed in more detail in section III.F.

E. What Are the Costs and Benefits at 3, 5, 10, and 20 μg/L?

In accordance with section 1412 (b)(3)(C) of SDWA, EPA must analyze the costs and benefits of a proposed NPDWR. To comply with this provision, EPA included the complete analysis in the proposed rule. Also, in accordance with Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the arsenic rule in an Economic Analysis in conjunction with publishing the final rule. EPA has prepared an Economic Analysis to comply with the requirements of this Order. This section provides a summary of the information from the Arsenic Economic Analysis (EPA, 2000o).

1. Summary of Cost Analysis

National cost estimates of compliance with the arsenic rule were derived from estimates of utility treatment costs, monitoring and reporting costs, and start-up costs for both CWS and NTNCWSs. Utility treatment costs were derived using occurrence data, treatment train unit costs, and decision trees. The occurrence data provide a measure of the number of systems that would need to install treatment in each size category. The treatment train unit cost estimates provide a measure of how much a technology will cost to install. Decision trees vary by system size and are used as a prediction of the treatment technology trains facilities would likely install to comply with options considered for the revised arsenic standard. Detailed descriptions of the methodologies used in determining the costs of this rule are found in the ''Technologies and Cost for Removal of Arsenic in Drinking Water'' document (EPA, 2000t) and also the ''Arsenic Economic Analysis'' (EPA, 2000o), both of which are in the docket for this final rulemaking.

a. Total national costs. Under the MCL of 10 μg/L, the Agency estimates that total national costs to CWSs are $172.3 million (1999 dollars) annually at a 3% discount rate. This total national cost includes annual treatment costs ($169.6 million), annual monitoring and administrative costs ($1.8 million), and annual State costs ($0.9 million). Assuming a 7% discount rate, total national costs to CWSs are estimated at $196.6 million annually.

Total national costs to NTNCWSs are estimated at $8.1 million annually at a 3% discount rate. This includes annual treatment costs ($7.0 million), annual monitoring and administrative costs ($0.9 million), and annual State costs ($0.1 million). Total national costs to NTNCWSs, assuming a 7% discount rate, are estimated at $9.1 million annually.

Table III.E–1 shows the total national cost breakdown for the arsenic MCL and also for three other arsenic levels considered in the proposed rule. Expected system costs include treatment costs, monitoring costs, and administrative costs of compliance. State costs include monitoring and administrative costs of implementation. As expected, aggregate arsenic compliance costs increase with decreasing arsenic MCL levels as more systems are affected.

TABLE III.E–1.—TOTAL ANNUAL NATIONAL SYSTEM AND STATE COMPLIANCE COSTS

[$ millions, 1999]

Discount rate	CWS		NTNCWS		Total	
	3 percent	7 percent	3 percent	7 percent	3 percent	7 percent
MCL = 3 μg/L						
System Costs	$668.1	$759.5	$28.2	$31.0	$696.3	$790.4
Treatment	665.9	756.5	27.2	29.6	693.1	786.0
Monitoring/Administrative	2.2	3.0	1.0	1.4	3.2	4.4
State Costs	1.4	1.6	0.1	0.2	1.5	1.7
Total [1]	669.4	761.0	28.3	31.1	697.8	792.1
MCL = 5 μg/L						
System Costs	396.4	451.1	17.3	18.9	413.5	470.2
Treatment	394.4	448.3	16.3	17.6	410.6	466.1
Monitoring/Administrative	2.0	2.8	1.0	1.3	2.9	4.1
State Costs	1.1	1.3	0.1	0.2	1.2	1.4
Total [1]	397.5	452.5	17.3	19.1	414.8	471.7
Final MCL = 10 μg/L						
System Costs	171.4	195.5	7.9	8.9	179.4	204.4
Treatment	169.6	193.0	7.0	7.6	176.7	200.6
Monitoring/Administrative	1.8	2.5	0.9	1.3	2.7	3.8
State Costs	0.9	1.0	0.1	0.2	1.0	1.2
Total [1]	172.3	196.6	8.1	9.1	180.4	205.6
MCL = 20 μg/L						
System Costs	62.4	71.4	3.5	4.1	65.9	75.5
Treatment	60.7	69.0	2.6	2.8	63.3	71.8
Monitoring/Administrative	1.7	2.4	0.9	1.3	2.6	3.7

TABLE III.E–1.—TOTAL ANNUAL NATIONAL SYSTEM AND STATE COMPLIANCE COSTS—Continued

[$ millions, 1999]

Discount rate	CWS		NTNCWS		Total	
	3 percent	7 percent	3 percent	7 percent	3 percent	7 percent
State Costs	0.7	0.8	0.1	0.2	0.9	1.0
Total [1]	63.2	72.3	3.6	4.2	66.8	76.5

[1] Total may not match detail due to rounding.

b. Household costs. Table III.E–2 shows mean annual costs per household for those households that are served by systems that may need to treat under today's rule. As discussed in Table III.C–6 of today's preamble and Table 8–2 of the Economic Analysis, of the approximately 74,000 systems that are covered by today's rule, EPA estimates that only about 3,433 of these systems will require treatment. Table III.E–2 refers only to the households served by systems expected to need treatment. The average household cost increase resulting from today's rule is $31.85. However, due to economies of scale, costs per household are higher in the smaller size categories, and lower in the larger size categories. For today's rule (10 μg/L), costs are expected to be $326.82 per household for systems serving <100 people, and $162.50 per household for systems serving 101–500 people. Costs per households in systems larger than those are substantially lower: From $70.72 to $0.86 per household. As shown in Table III.E–2, the costs per household do not vary dramatically across MCL options although Table III.E–1 shows that total national costs are significantly different. This divergence is attributable to the total number of households affected by each MCL level and not the cost of treatment. For example, approximately eleven million households would be affected by an MCL of 3 μg/L compared to approximately three million affected by the today's final rule MCL of 10 μg/L. In addition, the household costs change relatively little among MCL options because while each progressively lower MCL option brings in a larger number of systems subject to the rule, the majority of those systems generally need only minimal removal of arsenic. This fact offsets, to an extent, the increased costs as a result of more systems covered at lower MCL options. A more detailed discussion of household costs can be found in Chapter 6 of the ''Arsenic Economic Analysis'' document (EPA, 2000o).

TABLE III.E–2.—MEAN ANNUAL COSTS PER HOUSEHOLD

[in 1999 dollars] [1]

System size	3 μg/L	5 μg/L	10 μg/L	20 μg/L
<100	$317.00	$318.26	$326.82	$351.15
101–500	166.91	164.02	162.50	166.72
501–1,000	74.81	73.11	70.72	68.24
1,001–3.300	63.76	61.94	58.24	54.36
3.301–10,000	42.84	40.18	37.71	34.63
10,001–50,000	38.40	36.07	32.37	29.05
50,001–100,000	31.63	29.45	24.81	22.63
100,001–1,000,000	25.29	23.34	20.52	19.26
>1,000,000	7.41	2.79	0.86	0.15
All categories	41.34	36.95	31.85	23.95

[1] Only households served by those systems expected to install treatment.

2. Summary of Benefits Analysis

Arsenic ingestion has been linked to a multitude of health effects, both cancerous and non-cancerous. These health effects include cancer of the bladder, lungs, skin, kidney, nasal passages, liver, and prostate. Arsenic ingestion has also been attributed to cardiovascular, pulmonary, immunological, and neurological, endocrine effects. A complete list of the arsenic-related health effects reported in humans is discussed in section III. D of this preamble. Current research on arsenic exposure has only been able to provide enough information to conduct a quantitative assessment of bladder and lung cancers. The other health effects and possible non-health benefits remain unquantified in this analysis but are discussed qualitatively. It is important to note that if the Agency were able to quantify additional arsenic-related health effects and non-health effects, the quantified benefits estimates may be significantly higher than the estimates presented in this analysis. In addition, the SDWA amendments of 1996 require that EPA fully consider both quantifiable and non-quantifiable benefits that result from drinking water regulations and has done this for today's arsenic rule.

a. Primary analysis. Quantifiable benefits. Although arsenic in drinking water has been associated with numerous health effects (see section III.D), the quantified benefits that result from today's rule are associated only with reductions in arsenic-related bladder and lung cancers. A complete discussion of risk assessment methodology and assumptions can be found in Chapter 5 of the ''Arsenic Economic Analysis'' document (EPA, 2000o).

The quantified benefits for today's rule for both CWSs and NTNCWSs range from $140 million to $198 million and consider both lower- and upper-bound risk levels. Specifically, the benefits to the CWSs are approximately $138.2 million to $193.2 million and $1.4 million to $4.5 million for NTNCWSs. Table III.E–3 shows the complete range of quantified benefits for the other MCL levels considered by the Agency. Section III.D.2. of this preamble explains the derivation of the upper- and lower-bound estimates

In order to monetize the benefit from the bladder and lung cancers cases avoided, the Agency used two different values. First, a value of statistical life (VSL) estimate was applied to those cancer cases that result in a mortality. EPA assumed a 26% mortality rate for bladder cancer and an 88% mortality rate for lung cancer (EPA, 1999j; EPA, 1998n). The current VSL value used by the Agency is $6.1 million, in 1999 dollars. This value of $6.1 million does not reflect any adjustments to account for national real income growth that occurred subsequent to the completion of the wage-risk studies on which EPA's VSL estimate is derived. Were the Agency to adjust the VSL to account for this growth in real income, the VSL would be approximately $6.77 million (assuming a 1.0 income elasticity).

Second, a willingness-to-pay value (WTP) is used to monetize the cancer cases that do not result in a mortality. The WTP value for avoiding a non-fatal cancer is not currently available; therefore, the Agency used a WTP estimate to reduce a case of chronic bronchitis as a proxy. The use of this value may understate the true benefit if the WTP to avoid a nonfatal cancer is greater than the WTP to avoid a case of chronic bronchitis. The mean value of this WTP estimate is $607,000 (in 1999 dollars). A complete discussion of the VSL and WTP values and how they are calculated can be found in Chapter 5 for the ''Arsenic Economic Analysis'' document (EPA, 2000o).

—Non-quantifiable benefits. There are a number of important non-quantified benefits that EPA considered in its analysis. Chief among these are certain health impacts known to be caused by arsenic, though, while they may be substantial, the extent to which these impacts occur at levels below 50 µg/L is unknown. These additional health effects include cancers, other than bladder and lung cancers, as well as non-cancer health effects. In addition, EPA has identified non-health benefits that may result from today's rule, which are discussed next.

EPA was not able to quantify many of the health effects potentially associated with arsenic due to data limitations. These health effects include other cancers such as skin and prostate cancer and non-cancer endpoints such as cardiovascular, pulmonary, and neurological impacts. These health effects and the relevant studies linking these health effects to arsenic in drinking water are discussed in section III.D. of today's rule. For example, a number of epidemiologic studies conducted in several countries (*e.g.,* Taiwan, Japan, England, Hungary, Mexico, Chile, and Argentina) report an association between arsenic in drinking water and skin cancer in exposed populations. Studies conducted in the U.S. have not demonstrated an association between inorganic arsenic in drinking water and skin cancer. However, these studies may not have included enough people in their design to detect these types of effects.

Other potential benefits not quantified or monetized in today's rule include reduced uncertainty about becoming ill from consumption of arsenic in drinking water and the ability for some treatment technologies to eliminate multiple contaminants. The reduced uncertainty concept depends on several factors including consumer's degree of risk aversion, their perceptions about the drinking water quality (degree to which they will be affected by the regulatory action), and the expected probability and severity of human heath effects associated with arsenic contamination of drinking water. Another non-quantified benefit is the effect on those systems that install treatment technologies that can address multiple contaminants. For example, membrane systems, such as reverse osmosis, can be used for arsenic removal but can also remove many other contaminants that EPA is in the process of regulating or considering regulating. Therefore, by installing a reverse osmosis system, a system may not have to make any additional changes to comply with these future regulations.

TABLE III.E–3.—ESTIMATED BENEFITS FROM REDUCING ARSENIC IN DRINKING WATER

[$ millions 1999]

Arsenic level (µg/L)	Total quantified health benefits [1]	Potential non-quantified health benefits includes reductions in:
3	$213.8–$490.9	• Skin Cancer. • Kidney Cancer. • Cancer of the Nasal Passages. • Liver Cancer. • Prostate Cancer. • Cardiovascular Effects. • Pulmonary Effects. • Immunological Effects. • Neurological Effects. • Endocrine Effects.
5	$191.1–$355.6	
10	$139.6–$197.7	
20	$66.2–$75.3	

[1] Benefits from reduction in bladder and lung cancer. The range represents both a lower and upper bound risk as discussed in section III. D. of this preamble.

b. Sensitivity analysis on benefits valuation. For the final rulemaking analysis, some commenters have argued that the Agency should consider an assumed time lag or latency period in its benefits calculations. The term ''latency'' can be used in different ways, depending on the context. For example, health scientists tend to define latency as the period beginning with the initial exposure to the carcinogen and ending when the cancer is initially manifested (or diagnosed), while others consider latency as the period between manifestation of the cancer and death. Latency, in this case, refers to the difference between the time of initial exposure to environmental carcinogens and the actual mortality. Use of such an approach might reduce significantly the present value of health risk reduction benefits estimates.

In the proposed arsenic rule, the Agency included qualitative language on the latency issue, including descriptions of other adjustments which may influence the estimate of economic benefits associated with avoided cancer fatalities. The Agency also agreed to ask the SAB to conduct a review of the benefits' transfer issues and possible adjustment factors associated with economic valuation of mortality risks. A summary of the SAB's recommendations is shown in the following section.

c. SAB recommendations. EPA brought this issue before the Environmental Economics Advisory Committee (EEAC) of EPA's SAB in a meeting held on February 25, 2000 in Washington, DC. The SAB submitted a final report on its findings and recommendations to EPA on July 27, 2000. The Panel's report made a number of recommendations on the adjustment factors and benefit-cost analysis in general. A copy of the final SAB report (EPA, 2000j) is in the record for this rulemaking.

The SAB Panel noted that benefit-cost analysis, as described in the Agency's Guidelines for Preparing Economic Analysis (EPA, 2000k), is not the only analytical tool nor is efficiency the only appropriate criterion for social decision making. The SAB Panel also stated that it is important to carry out such analyses in an unbiased manner with as much precision as possible. In its report, the SAB recommended that the Agency continue to use a wage-risk-based VSL as its primary estimate; any appropriate adjustments that are made for timing (*e.g.*, latency) and income growth should be part of the Agency's main analysis while any other proposed adjustments should be accounted for in sensitivity analyses to show how results would change if the VSL were adjusted for some of the major differences in the characteristics of the risk and of the affected populations. The SAB recommended including only adjustments for latency and income growth in the main analysis because it did not believe any of the other proposed adjustments were adequately supported in the literature at the present time. Specifically, the SAB report recommended that (1) Health benefits brought about by current policy initiatives (*i.e.*, after a latency period) should be discounted to present value using the same rate that is used to discount other future benefits and costs in the primary analysis; and any other proposed adjustments should be accounted for in a sensitivity analysis including adjustments to the VSL for a ''cancer premium,'' voluntariness and controllability, altruism, risk aversion, and ages of the affected population. No adjustment should be made to the VSL to reflect health status of persons whose cancer risks are reduced. (2) Estimates of VSLs accruing in future years should be adjusted in the primary analysis to reflect anticipated income growth, using a range of income elasticities.

After considering the SAB's recommendations, EPA has developed a sensitivity analysis of the latency structure and associated benefits for the arsenic rule, as described in the next section and in the Economic Analysis for the final rule. This analysis consists of health risk reduction benefits that reflect adjustments for discounting, incorporation of a range of latency period assumptions, adjustments for growth in income, and incorporation of other factors such as voluntariness and controllability. Although the SAB recommended accounting for latency in a primary benefits analysis, the Agency believes that, in the absence of any sound scientific evidence on the duration of particular latency periods for arsenic related cancers, discounted benefits estimates for arsenic are more appropriately accounted for in a sensitivity analysis. Sensitivity analyses are generally reserved for examining the effects of accounting for highly uncertain factors, such as the estimation of latency periods, on health risk reduction benefits estimates.

Defining a latency period is highly uncertain because the length of the latency period is often poorly understood by health scientists. In some cases, information on the progression of a cancer is based on animal studies, and extrapolation to humans is complex and uncertain. Even when human studies are available, the dose considered may differ significantly from the dose generally associated with drinking water contaminants (*e.g.*, involve a high level of exposure over a short time period, rather than a long term, low level of exposure). The magnitude of the dose, may in turn, affect the resulting latency period. Information on latency may be unavailable in many cases or, if available, may be highly uncertain and vary significantly across individuals. The Agency recognizes, however, that despite significant uncertainty in the latency period associated with arsenic exposure through drinking water, it is unlikely that all cancer reduction benefits would be realized immediately upon exposure reduction. To the extent that there are delays due to latency in the realization of these benefits, monetized cancer reduction benefits would be discounted; although, as discussed above, this may be offset by other adjustments.

d. Analytical approach. For the latency sensitivity analysis, the health benefits have been broken into separate treatments of morbidity and mortality. The mortality component of the total benefits is examined in this analysis because a cancer latency period (*i.e.*, the time period between initial exposure to environmental carcinogens and the actual fatality) impacts arsenic-related fatalities to a greater extent than arsenic-related morbidity. For purposes of this analysis, the Agency examined the impacts of various latency period assumptions, adjustments for income growth, and incorporation of other adjustments such as a voluntariness and controllability, on bladder and lung cancer fatalities associated with arsenic in drinking water (EPA, 2000k).

Because the latency period for arsenic related bladder and lung cancers is unknown, EPA has assumed a range of latency periods from 5 to 20 years. While both lung and bladder cancer have relatively long, average latencies, the lower end of the latency period is substantially less. As can be seen by inspection of the Surveillance, Epidemiology, and End Results (SEER) data of the National Cancer Institute, significant incidence of both cancers occurs in individuals in the 15–19 year old age groups (NCI, 2000). This strongly indicates a short latency period for whatever the cause of the cancer may have been.

Moreover, the mode of action for arsenic is suspected to be one that operates at a late stage of the cancer process that may advance the expression of cancers initiated by other causes (sometimes referred to as ''promoting out'' the cancerous effect). Therapeutic treatment with the drug cyclophosphamide, which causes cell toxicity, has been seen to induce bladder cancer in as little as 7 months to 15 years in affected patients. This was of course a high dose treatment, but the example serves to illustrate the ability of an agent to advance the development of cancer.

For these reasons, we believe latency periods of 5, 10, and 20 years serve as reasonable approximations, in the absence of definitive data on arsenic-induced cancers, of the latency periods for the sensitivity analysis.

Table III.E–4 shows the sensitivity of the primary analysis VSL estimate ($6.1 million, 1999 dollars) to changes in latency period assumptions and also with the incorporation of an adjustment to reflect changes in WTP based on real income growth and other adjustment factors. As is shown in Table III.E–4, the adjusted VSL is greater than the primary VSL ($6.77 million versus $6.1 million) at an income elasticity of 1.0, with adjustments for income growth only. Assuming a 3% discount rate, the lowest adjusted VSL value ($3.44 million) is yielded over a 20-year latency period that includes discounting and income growth only (income elasticity = 0.22). Assuming a 7% discount rate, the highest adjusted VSL is also $6.77 million (adjusted for income growth only (income elasticity = 1.0)). The lowest adjusted VSL is $1.61 million (discounted over 20 years).

TABLE III.E–4.— SENSITIVITY OF THE PRIMARY VSL ESTIMATE TO CHANGES IN LATENCY PERIOD ASSUMPTIONS, INCOME GROWTH, AND OTHER ADJUSTMENTS

[$ millions, 1999]

Adjustment factor	Latency period (Years)		
	5	10	20
3% Discount Rate			
Primary Analysis (No VSL Adjustment)	6.1	6.1	6.1
Adjusted for Income Growth: [1]			
elasticity = 0.22	6.22	6.22	6.22
elasticity = 1.0	6.77	6.77	6.77
Adjusted for Income Growth [1] and Discounting:			
elasticity = 0.22	5.37	4.63	3.44
elasticity = 1.0	5.84	5.04	3.75
Adjusted for Income Growth,[1] Discounting, and 7% Increase for Voluntariness and Controllability;			
elasticity = 0.22	5.74	4.95	3.69
elasticity = 1.0	6.25	5.39	4.01
Break-Even for Other Characteristics (as a percentage of the primary VSL estimate);			
elasticity = 0.22	6 percent	19 percent	40 percent
elasticity = 1.0	−2 percent	12 percent	34 percent
7% Discount Rate			
Primary Analysis (No VSL Adjustment)	6.1	6.1	6.1
Adjusted for Income Growth:[1]			
elasticity = 0.22	6.22	6.22	6.22
elasticity = 1.0	6.77	6.77	6.77
Adjusted for Income Growth [1] and Discounting:			
elasticity = 0.22	4.44	3.16	1.61
elasticity = 1.0	4.83	3.44	1.75
Adjusted for Income Growth, [1] Discounting, and 7% Increase for Voluntariness and Controllability:			
elasticity = 0.22	4.75	3.38	1.72
elasticity = 1.0	5.17	3.68	1.87
Break-Even for Other Characteristics (as a percentage of the primary VSL estimate):			
elasticity = 0.22	22 percent	45 percent	72 percent
elasticity = 1.0	15 percent	40 percent	69 percent

[1] This adjustment reflects the change in WTP based on real income growth from 1990 to 1999.

The first row of both the 3% and 7% discount rate panels in Table III.E–4 shows the VSL used in the primary analysis. Because this value has not been adjusted for discounting over an assumed and unknown latency period, this value does not deviate from the original $6.1 million used in the primary benefits analysis. The second and third rows of both the 3 and 7 percent panels show the adjustments to the primary VSL to account for changes in WTP for fatal risk reductions associated with real income growth from 1990 to 1999. As real income grows, the WTP to avoid fatal risks is also expected to increase at a rate corresponding to the income elasticity of demand, as discussed below. This income growth, from the years 1990 to 1999, accounts for the differences in incomes of the VSL study population versus the population affected by the arsenic rule. This does not include any income adjustments over a latency period because of methodological issues that have not yet been resolved. However, pending the resolution of these issues, EPA may include an adjustment for income growth over a latency period in future analyses, as recommended by the SAB.

The fourth and fifth rows of both the 3% and 7% panels illustrates the impacts of adjusting the primary VSL for discounting and WTP changes based on real income growth over a range of assumed latency periods. As is shown in Table III.E–4, this value decreases from $5.84 million assuming a five-year latency period to $3.75 million assuming a 20-year latency period (at a 3% discount rate and income elasticity of 1.0). At a 7% discount rate, this value decreases from $4.83 million to $1.75 million.

The sixth and seventh rows of the 3% and 7% panels illustrate the effects of incorporating a 7% increase for voluntariness and controllability. The 7% adjustment is based on a study by Cropper and Subramanian (1999) that indicates individuals may place a slightly higher Willingness to Pay (WTP) on risks where exposure is neither voluntary nor controllable by the individual.

In adjusting for WTP changes based on real income growth, EPA used a range of income elasticities from the economics literature. Income elasticity is the % change in demand for a good (in this case, WTP for fatal risk reductions) for every 1% change in income. For example, an income elasticity of 1.0 implies that a 10 percent higher income level results in a 10% higher WTP for fatal risk reductions. In a recent study (EPA, 2000l), EPA reviewed the literature related to the income elasticity of demand for the prevention of fatal health impacts. Based on data from cross-sectional studies of wage premiums, a range of elasticity estimates for serious health impacts was developed, ranging from a lower-end estimate of 0.22 to an upper-end estimate of 1.0.

There are several other characteristics that differ between the VSL estimates used in the primary analysis and an ideal estimate specific to the case of cancer risks from arsenic. These might

include a cancer premium, differences in risk aversion, altruism, age of the individual affected, and a morbidity component of the VSL mortality estimate. Very little empirical information is available on the impact that these characteristics have on VSL estimates so they are not accounted for directly in this sensitivity analysis. A more complete discussion of the other characteristics identified by economists as having a potential impact on willingness to pay to reduce mortality risks can be found in chapter seven of the Agency's ''Guidelines for Preparing Economic Analyses'' (EPA 2000k), which is available in the docket for this final rulemaking.

However, it is possible to use a different type of analysis to address the question: what would the impact on VSL of these additional characteristics need to be to produce the $6.1 million VSL used in the primary benefits analysis? (See primary benefits analysis in section III.E.2.a of today's rule.) The last two rows of the 3% and 7% panels of Table III.E–4 attempt to answer this question in percentage terms. For example, at a 3% discount rate over a 10-year latency period, income elasticity of 1.0, and a 7% adjustment for controllability and voluntariness, a factor of 12% (as shown in the bottom row of the 3% panel of Table III.E–4) indicates that if accounting for these characteristics would increase VSL by more than 12% then the primary analysis will tend to understate the value of risk reductions. If accounting for these characteristics would not increase VSL by at least 12%, then the primary analysis may overstate benefits (a negative % indicates that the primary analysis understates benefits unless the combined impact of these additional characteristics actually reduces VSL estimates).

Some researchers believe that the value of some of these characteristics will substantially add to the unadjusted VSL (one study suggests that a cancer premium alone may be worth an additional 100% of primary VSL value (Revesz, 1999)). Some researchers also believe that some of these characteristics have a negative effect on VSL, suggesting that some of these factors offset one another. Until we know more about these various factors we cannot explicitly make adjustments to existing VSL estimates. The SAB noted in its report that these characteristics require more empirical research prior to incorporation into the Agency's primary benefits analysis, but could be explored as part of a sensitivity analysis.

e. Results. Table III.E–5 illustrates the impacts of changes in VSL adjustment factor assumptions on the estimated benefits for the range of fatal bladder and lung cancer cases avoided in the final arsenic rule, assuming a 3% discount rate. The results of this analysis at a 7% discount rate are given in Table III.E–6. These results were calculated by applying the adjusted VSL from Table III.E–4 to the lower- and upper-bound estimates of fatal bladder and lung cancer cases avoided as shown in Table III.E–3 in section III.D.2 of today's rule. For purposes of this sensitivity analysis, EPA presented combined bladder and lung cancer cases avoided in Tables III.E–5 and III.E–6. Health risk reduction benefits attributable to reduced arsenic levels in both CWSs and NTNCWSs are presented in these tables as well.

It is important to note that the monetized benefits estimates shown in this section reflect quantifiable benefits only. As shown in section III.E.2.a, there may be a number of nonquantifiable benefits associated with regulating arsenic in drinking water. Were EPA able to quantify some of the currently nonquantifiable health effects and other benefits associated with arsenic regulation, monetized benefits estimates would be higher than what is shown in the table. A more complete discussion of how risks from arsenic in drinking water and the corresponding health benefits were calculated is provided in the ''Arsenic Economic Analysis'' (EPA, 2000o), which is available in the docket for this final rulemaking.

TABLE III.E–5.—SENSITIVITY OF COMBINED ANNUAL BLADDER AND LUNG CANCER MORTALITY BENEFITS ESTIMATES TO CHANGES IN VSL ADJUSTMENT FACTOR ASSUMPTIONS

[$ millions, 1999, 3% discount rate] [1]

Arsenic Level (μg/L)	3	5	10	20
5-Year Latency Period Assumption				
Primary Analysis (No VSL Adjustment)	199–452	176–328	130–182	62–69
Adjusted for Income Growth [2]				
E = 0.22	203–461	181–334	133–186	63–70
E = 1.0	221–502	197–364	144–202	69–77
Adjusted for Income Growth[2] and Discounting:				
E = 0.22	175–398	156–288	114–160	55–61
E = 1.0	190–433	170–314	124–174	60–66
Adjusted for Income Growth,[2] Discounting, and 7% Increase for Voluntariness and Controllability:				
E = 0.22	187–425	167–308	122–171	59–65
E = 1.0	204–463	182–336	133–186	64–71
10-Year Latency Period Assumption				
Primary Analysis (No VSL Adjustment)	199–452	176–328	130–182	62–69
Adjusted for Income Growth: [2]				
E = 0.22	203–461	181–334	133–186	63–70
E = 1.0	221–502	197–364	144–202	69–77
Adjusted for Income Growth,[2] and Discounting:				
E = 0.22	151–343	135–249	99–138	47–52
E = 1.0	164–373	147–271	107–150	51–57
Adjusted for Income Growth,[2] Discounting, and 7% Increase for Voluntariness and Controllability:				
E = 0.22	161–367	144–266	105–148	50–56
E = 1.0	176–399	157–289	115–161	55–61

TABLE III.E–5.—SENSITIVITY OF COMBINED ANNUAL BLADDER AND LUNG CANCER MORTALITY BENEFITS ESTIMATES TO CHANGES IN VSL ADJUSTMENT FACTOR ASSUMPTIONS—Continued

[$ millions, 1999, 3% discount rate] [1]

Arsenic Level (μg/L)	3	5	10	20
20-Year Latency Period Assumption				
Primary Analysis (No VSL Adjustment)	199–452	176–328	130–182	62–69
Adjusted for Income Growth: [2]				
E = 0.22	203–461	181–334	133–186	63–70
E = 1.0	221–502	197–364	144–202	69–77
Adjusted for Income Growth [2] and Discounting:				
E = 0.22	112–255	100–185	73–103	35–39
E = 1.0	122–278	109–201	80–112	38–42
Adjusted for Income Growth,[2] Discounting, and 7% Increase for Voluntariness and Controllability:				
E = 0.22	120–273	107–198	79–110	38–42
E = 1.0	131–297	117–215	85–119	41–45

[1] The lower- and upper-bound benefits estimates correspond to the lower- and upper-bound risk estimates and cancer cases avoided as shown in section III.D.2 of this preamble.

[2] This adjustment reflects the change in WTP based on real income growth from 1990 to 1999. E = income elasticity.

TABLE III.E–6.—SENSITIVITY OF COMBINED ANNUAL BLADDER AND LUNG CANCER MORTALITY BENEFITS ESTIMATES TO CHANGES IN VSL ADJUSTMENT FACTOR ASSUMPTIONS

[$ millions, 1999, 7% discount rate] [1]

Arsenic Level (μg/L)	3	5	10	20
5-Year Latency Period Assumption				
Primary Analysis (No VSL Adjustment)	199–452	178–328	130–182	62–69
Adjusted for Income Growth: [2]				
E = 0.22	203–461	181–334	133–186	63–70
E = 1.0	221–502	197–364	144–202	69–77
Adjusted for Income Growth,[2] and Discounting:				
E = 0.22	145–329	129–238	95–132	45–50
E = 1.0	157–358	141–259	103–144	50–55
Adjusted for Income Growth,[2] Discounting, and 7% Increase for Voluntariness and Controllability:				
E = 0.22	155–352	138–255	102–142	49–54
E = 1.0	168–383	150–278	110–154	53–58
10-Year Latency Period Assumption				
Primary Analysis (No VSL Adjustment)	199–452	178–328	130–182	62–69
Adjusted for Income Growth: [2]				
E = 0.22	203–461	181–334	133–186	63–70
E = 1.0	221–502	197–364	144–202	69–77
Adjusted for Income Growth [2] and Discounting:				
E = 0.22	103–234	92–170	67–94	32–36
E = 1.0	112–255	100–185	73–103	35–39
Adjusted for Income Growth,[2] Discounting, and 7% Increase for Voluntariness and Controllability:				
E = 0.22	110–251	98–182	72–101	35–38
E = 1.0	120–273	107–198	78–110	38–42
20-Year Latency Period Assumption				
Primary Analysis (No VSL Adjustment)	199–452	178–328	130–182	62–69
Adjusted for Income Growth: [2]				
E = 0.22	203–461	181–334	133–186	63–70
E = 1.0	221–502	197–364	144–202	69–77
Adjusted for Income Growth [2] and Discounting:				
E = 0.22	53–119	47–86	34–48	16–18
E = 1.0	57–130	51–94	37–52	18–20
Adjusted for Income Growth,[2] Discounting, and 7% Increase for Voluntariness and Controllability:				
E = 0.22	56–127	50–92	37–51	18–20
E = 1.0	61–139	54–100	40–56	19–21

[1] The lower- and upper-bound benefits estimates correspond to the lower- and upper-bound risk estimates and cancer cases avoided as shown in section III.D.2 of this preamble.

[2] This adjustment reflects the change in WTP based on real income growth from 1990 to 1999. E = income elasticity.

As shown in Tables III.E–5 and III.E–6, the highest range of adjusted benefits estimates at the 10 μg/L MCL ($144–$202 million) are yielded when benefits are adjusted for changes in WTP based on real income growth only with an income elasticity of 1.0. The lowest adjusted benefits estimates at the 10 μg/L MCL ($73–$103 million at 3%, $34–$48 million at 7%) are yielded under the assumption of a 20-year latency period that includes adjustments for discounting and WTP changes based on real income growth (income elasticity = 0.22). These results indicate the high degree of sensitivity of benefits estimates to different assumptions of a latency period, discount rate, and income elasticity and also the inclusion of adjustments for income growth and voluntariness and controllability.

3. Comparison of Costs and Benefits

This section presents a comparison of quantifiable total national costs and benefits for each of the arsenic regulatory options considered. Three separate analyses are considered, including a direct comparison of aggregate national costs and benefits, a summary of benefit-cost ratios and net benefits, and the results of a cost-effectiveness analysis of each regulatory option.

a. Total national costs and benefits. Table III.E–7 shows the annual costs and benefits associated with the 10 μg/L MCL and also with three other arsenic levels considered in the proposed rule. Both costs and benefits increase as arsenic levels decrease. Costs increase over decreasing arsenic levels because of the increasing number of systems that must treat to lower arsenic levels. Benefits estimates increase as arsenic levels decrease due to the greater number of both fatal and non-fatal cancer cases avoided at lower arsenic levels. Additionally, other potential non-quantifiable health benefits are summarized in Table III.E–7.

TABLE III.E–7 ESTIMATED ANNUAL COSTS AND BENEFITS FROM REDUCING ARSENIC IN DRINKING WATER

[1999, $ millions]

Arsenic level (μg/L)	Total national costs to CWSs and NTNCSs [1]	Total bladder cancer health benefits [2]	Total lung cancer health benefits [2]	Total combined cancer health benefits [2]	Potential nonquantifiable health benefits
3	697.8–792.1	58.2–156.4	155.6–334.5	213.8–490.9	Skin Cancer; Kidney Cancer; Cancer of the Nasal Passages; Liver Cancer; Prostate Cancer; Cardiovascular Effects; Pulmonary Effects; Immunological Effects; Neurological Effects; Endocrine Effects.
5	414.8–471.7	52.0–113.3	139.1–242.3	191.1–355.6	
10	180.4–205.6	38.0–63.0	101.6–134.7	139.6–197.7	
20	66.8–76.5	20.1–21.5	46.1–53.8	66.2–75.3	

[1] Costs include treatment, monitoring, O&M, and administrative costs to CWSs and NTNCWSs and State costs for administration of water programs. The lower number shows costs annualized at a consumption rate of interest of 3%, EPA's preferred approach. The higher number shows costs annualized at 7%, which represents the standard discount rate preferred by OMB for benefit-cost analyses of government programs and regulations.

[2] The lower- and upper-bound bladder, lung, and combined cancer benefits estimates correspond to the lower- and upper-bound risk estimates and cancer cases avoided as shown in section III.D.2 of this preamble; these estimates include both mortality and morbidity.

b. National net benefits and benefit-cost ratios. Table III.E–8 describes the quantifiable net benefits and the benefit-cost ratios under various regulatory levels for both CWSs and NTNCWSs at 3% and 7% discount rates. The net benefits and benefit-cost ratios do not include any of the potential nonquantifiable health benefits that are listed in the previous table. As shown in Table III.E–8, under both the lower- and upper-bound estimates of avoided lung and bladder cancer cases, the net benefits decrease as the arsenic rule MCL options become increasingly more stringent. Similarly, the benefit-cost ratios decrease with each more stringent MCL option. Costs outweigh the quantified benefits for the lower-bound benefits estimates under all four MCL options. Benefit-cost ratios are equal to or greater than 1.0 for the upper-bound benefits estimates (at both 3% and 7% discount rates) for arsenic levels of 10 μg/L and 20 μg/L.

TABLE III.E—8. SUMMARY OF NATIONAL ANNUAL NET BENEFITS AND BENEFIT-COST RATIOS, COMBINED BLADDER AND LUNG CANCER CASES

[1999, $ millions] [1 2 3]

		Arsenic level (μg/L)			
		3	5	10	20
3% Discount Rate					
Lower Bound	Net Benefits	(484.0)	(223.7)	(40.8)	(0.6)
	B/C Ratio	0.3	0.5	0.8	1.0
Upper Bound	Net Benefits	(206.8)	(59.2)	17.3	8.5
	B/C Ratio	0.7	0.9	1.1	1.1
7% Discount Rate					
Lower Bound	Net Benefits	(578.3)	(280.6)	(66.0)	(10.3)
	B/C Ratio	0.3	0.4	0.7	0.9
Upper Bound	Net Benefits	(301.1)	(116.1)	(7.9)	(1.2)

TABLE III.E—8. SUMMARY OF NATIONAL ANNUAL NET BENEFITS AND BENEFIT-COST RATIOS, COMBINED BLADDER AND LUNG CANCER CASES—Continued

[1999, $ millions][1 2 3]

		Arsenic level (μg/L)			
		3	5	10	20
	B/C Ratio	0.6	0.8	1.0	1.0

[1] Costs include treatment, monitoring, O&M, and administrative costs to CWSs and NTNCWSs and State costs for administration of water programs. The lower number shows costs annualized at a consumption rate of interest of 3%, EPA's preferred approach. The higher number shows costs annualized at 7%, which represents the standard discount rate preferred by OMB for benefit-cost analyses of government programs and regulations.
[2] The lower- and upper-bound bladder, lung, and combined cancer benefits estimates correspond to the lower- and upper-bound risk estimates and cancer cases avoided as shown in section III.D.2 of this preamble; unquantified benefits are not included.
[3] Numbers in parentheses indicate negative numbers.

c. Incremental costs and benefits. Incremental costs and benefits are those that are incurred or realized in reducing arsenic exposures from one level to the next more stringent level (*e.g.*, from 20 μg/L to 10 μg/L). Estimates of incremental costs are useful in developing estimates of the cost-effectiveness of successively more stringent requirements.

Table III.E–9 shows the incremental total national risk reduction, arsenic mitigation costs, and monetized health benefits for the various arsenic levels valued using discount rates of three and seven percent.

TABLE III.E–9—ESTIMATES OF THE ANNUAL INCREMENTAL RISK REDUCTION, COSTS, AND BENEFITS OF REDUCING ARSENIC IN DRINKING WATER

[$ millions, 1999]

Benefit-cost element	Arsenic level (μg/L)			
	20	10	5	3
Incremental Risk Reduction: Fatal Cancers Avoided per Year[1]	10.2–11.3	11.1–18.5	7.8–23.9	3.5–20.4
Incremental Risk Reduction: Non-Fatal Cancers Avoided per Year[1]	8.5–8.8	7.6–17.1	5.9–20.6	2.6–17.7
Annual Incremental Monetized Benefits[2]	$66.2–$75.3	$73.4–$122.4	$51.5–$157.9	$22.7–$135.4
Annual Incremental Costs (3%)[3]	$66.8	$113.6	$234.4	$283.0
Annual Incremental Costs (7%)[3]	$76.5	$129.1	$266.0	$320.5

[1] Total fatal and non-fatal cancer cases avoided are discussed in section III.D.2 of this preamble.
[2] The lower- and upper-bound combined cancer benefits estimates correspond to the lower- and upper-bound risk estimates and cancer cases avoided as shown in section III.D.2 of this preamble.
[3] Costs include treatment, monitoring, O&M, and administrative costs to CWSs and NTNCWSs and State costs for administration of water programs.

d. Cost-per-case avoided. Cost-per-case avoided is a commonly used measure of the economic efficiency with which regulatory options are meeting the intended regulatory objectives. Table III.E–10 shows the results of an analysis in which the average national cost of achieving each unit of reduction in cases of bladder and lung cancer avoided, was calculated. The average annual cost per case avoided was computed at each MCL option for both 3% and 7% discount rates.

As shown in Table III.E–10, the cost per bladder and lung cancer case avoided ranges from $4.8 million down to $3.2 million at the 10 μg/L MCL, assuming a 3% discount rate. At a 7% discount rate, the cost per bladder and lung cancer case avoided ranges from $5.5 million down to $3.7 million at the 10 μg/L MCL. As expected, the cost per bladder and lung cancer case avoided decreases with increasing arsenic levels. This is due to lower compliance costs at higher levels for the standard.

TABLE III.E–10.—ANNUAL COST PER CANCER CASE AVOIDED FOR THE FINAL ARSENIC RULE—COMBINED BLADDER AND LUNG CANCER CASES

$ millions, 1999]

Arsenic level (μg/L)	Lower-bound estimate[1]	Upper-bound estimate[1]
3 % Discount Rate		
3	12.2	5.0
5	8.1	4.1
10	4.8	3.2
20	3.5	3.4
7 % Discount Rate		
3	13.8	5.7
5	9.2	4.7
10	5.5	3.7

TABLE III.E–10.—ANNUAL COST PER CANCER CASE AVOIDED FOR THE FINAL ARSENIC RULE—COMBINED BLADDER AND LUNG CANCER CASES—Continued

$ millions, 1999]

Arsenic level (μg/L)	Lower-bound estimate[1]	Upper-bound estimate[1]
20	4.0	3.9

[1] The lower- and upper-bound cost per cancer case avoided corresponds to the range of combined cancer benefits estimates as shown in Table III.E–3.

4. Affordability

As noted previously, section 1412(b)(4)(E)(ii) of SDWA, as amended, requires EPA, when promulgating a national primary drinking water regulation which establishes a maximum contaminant level (MCL), to

list technology (considering source water quality) that achieves compliance with the MCL and is affordable for systems in three specific population size categories: 25–500, 501–3300, and 3301–10,000. If, for any given size category/source water quality combination, an affordable compliance technology cannot be identified, section 1412(b)(15)(A) requires the Agency to list a variance technology. Variance technologies may not achieve full compliance with the MCL but they must achieve the maximum contaminant reduction that is affordable considering the size of the system and the quality of the source water. In order for the technology to be listed, EPA must determine that this level of contaminant reduction is protective of public health.

A determination of national level affordability is concerned with identifying, for each of the given size categories, some central tendency or typical circumstance relating to their financial abilities. The metric EPA selected for this purpose is the median household income (MHI) for communities of the specified sizes. The household is thus the focus of the national-level affordability analysis. EPA considers treatment technology costs affordable to the typical household if they represent a percentage of MHI that appears reasonable when compared to other household expenditures. This approach is based on the assumption that the affordability to the median household served by the CWS can serve as an adequate proxy for the affordability of technologies to the system itself. The national-level affordability criteria have two major components: current annual water bills (baseline) and the affordability threshold (total % of MHI directed to drinking water). Current annual water bills were derived directly from the 1995 Community Water System Survey. Based on 1995 conditions, 0.75–0.78% of MHI is being directed to water bills for systems serving fewer than 10,000 persons.

The fundamental, core question in establishing national-level affordability criteria is: what is the threshold beyond which drinking water would no longer be affordable for the typical household in each system size category? Based upon careful analysis EPA believes this threshold to be 2.5% of MHI. In establishing this threshold, the Agency considered baseline household expenditures (as documented in the 1995 Consumer Expenditure Survey, Bureau of Labor Statistics) for piped water relative to expenditure benchmarks for other household goods, including those perceived as substitutes for piped water treated to higher standards, such as bottled water and point-of-use and point-of-entry devices. Based on these considerations, EPA concluded that current household water expenditures are low enough, relative to other expenditures, to support the cost of additional risk reductions. The detailed rationale for the selection of 2.5% MHI as the affordability threshold is provided in the guidance document entitled ''Variance Technology Findings for Contaminants Regulated Before 1996.'' The difference between the affordability threshold and current water bills is the available expenditure margin. This represents the dollar amount by which the water bill of the typical (median) household could increase before exceeding the affordability threshold of 2.5% of MHI.

By definition, the MHI is the income value exactly in the middle of the income distribution. The median is a measure of central tendency; its purpose is to help characterize the nature of a distribution of values. In the case of income, which tends not to be evenly distributed, the median is a much better indicator of central tendency than the mean, or arithmetic average, that could be significantly skewed by a few large values. The Agency recognizes that there will be half the households in each size category with incomes above the median, and half the households with incomes below the median. The objective of a national-level affordability analysis is to look across all the households in a given size category of systems and determine what is affordable to the typical, or ''middle of the road'' household.

The Agency recognizes that baseline costs change over time as water systems comply with new regulations and otherwise update and improve their systems. To take account of this upward movement in the baseline, the Agency plans to adjust the baseline it employs in its calculation in two ways. First, actual changes in the baseline will be measured approximately every 5 years by the Community Water System Survey. These changes will reflect not only the increased costs resulting from EPA drinking water rules, but also any changes resulting from other factors that could affect capital or operating and maintenance costs. Second, to the extent practical and appropriate during the period between Community Water System Surveys, the baseline will be adjusted to reflect the cost of rules promulgated during that period.

MHI also changes from year to year, generally increasing in constant dollar terms. For example, since 1995 MHI has increased (in 1999$) by 9.6%. Thus, to determine the available expenditure margin (the difference between the affordability threshold and the baseline) for each successive rule, adjustments would need to be made in both the baseline and the MHI.

Given the narrow and specific purpose for which the national-level affordability criteria are used, the Agency is not adjusting either the baseline or the MHI for its analysis for the final arsenic rule. As noted previously, MHI has increased by 9.6%. The rules, which have been promulgated since the baseline was developed, are the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfectants and Disinfection ByProducts Rule, the revised Radionuclides Rule, the Consumer Confidence Report Rule and the revised Public Notification Rule. The Interim Enhanced Surface Water Treatment Rule applies only to systems serving greater than 10,000 persons, so it has essentially no impact on the baseline costs for smaller systems. The Stage 1 Disinfectants and Disinfection ByProducts Rule does apply to small systems, and it has an impact on only 12% of the nearly 68,200 ground water systems serving < 10,000 persons; and on 70% of the nearly 5200 surface water systems serving < 10,000 persons. The revised Radionuclides Rule has limited impact since it, for the most part, reaffirmed long-standing MCLs. The Consumer Confidence Rule and revised Public Notification Rule result in no capital expenditures and only very modest administrative costs.

The Agency believes that, for purposes of assessing national-level affordability of the arsenic rule, the unadjusted baseline and unadjusted MHI are appropriate. Making adjustments to these two factors would not materially alter the outcome of the analysis.

The distinction between national-level affordability criteria and affordability assessments for individual systems cannot be over-emphasized. The national-level affordability criteria serve only to guide EPA on the listing of an affordable compliance technology versus a variance technology for a given system size/source water combination for a given contaminant. In the case of arsenic, EPA has determined that nationally affordable technologies exist for all system size categories and has therefore not identified a variance technology for any system size/source water combination. This means that EPA believes that the typical household in each system size category can afford the costs associated with the listed compliance technologies. EPA

recognizes that individual water systems may serve a preponderance of households with incomes well below the median or may face unusually high treatment costs due to some unusual local circumstance.

SDWA provides a number of tools that States can use to address affordability concerns for these individual water systems. Two of these tools are financial assistance under the Drinking Water State Revolving Fund (DWSRF) and extended compliance time-frames under an exemption. SDWA allows States to provide special assistance to water systems that the State determines to be disadvantaged, using State-developed affordability criteria. This special assistance may include forgiveness of principal, a negative interest rate, an interest rate lower than that charged to non-disadvantaged systems, and extended repayment periods of up to 30 years. To date, about half of the States have implemented disadvantaged community programs as part of their DWSRF. Almost one quarter of all loans made under the DWSRF have been made to systems classified as disadvantaged by the States.

In addition to special financial assistance through the DWSRF, as discussed previously, systems facing affordability concerns may also be eligible for extended time to achieve compliance under the terms of a State-issued exemption or may receive assistance under the Rural Utilities Service (RUS) program of the United States Department of Agriculture (see section I.L). Together with the approximately $1 billion per year being made available through the DWSRF, this results in a total of about $1.78 billion per year of Federal financial assistance available for drinking water.

Decisions that a drinking water system makes about how to allocate its costs to users and how to design rates can also have a significant effect on affordability for low-income households. A traditional declining block rate structure would be regressive and might result in the households with the least income subsidizing excessive water use by more affluent households. Numerous alternative rate designs are possible that are more progressive. Of particular interest in addressing affordability concerns is lifeline rates. Lifeline rates are a rate structure applicable to qualified residential customers that includes a specified block of water use priced below the standard charge for the customer class. Such rates are primarily designed to aid the poor in obtaining some minimum level of service at an affordable price.

The basic organizational or institutional structure of the drinking water system is another very important factor that influences the affordability of water service. The key issue here is the extent to which a given organizational or institutional structure is capable of achieving economic and operational efficiency. An especially important element of this efficiency relates to the degree to which a system seeks to work together with other systems. Systems that effectively work together, perhaps by combining management, will realize lower overall costs compared to the same systems working independently.

F. What MCL Is EPA Promulgating and What Is the Rationale for This Level?

1. Final MCL and Overview of Principal Considerations

EPA is today promulgating a final arsenic MCL of 10 μg/L. EPA's selection of this MCL is based on the SDWA statutory requirements for establishing an MCL and reflects the Agency's detailed evaluation and careful consideration of thousands of pages of comments. As part of this process, we have evaluated new data and analysis on occurrence, unit treatment costs, small system impacts, treatment technology availability, waste disposal options, and uncertainties regarding exposure and health effects data. Based on this new information, the Agency has revisited technical analyses, calculations, and judgments underlying the proposed MCL of 5 μg/L. As discussed in section III.E. in this preamble, the Agency has conducted a thorough revaluation of costs and has carefully considered substantial new analysis on this subject submitted by commenters. In addition, EPA has completed a detailed reassessment of the risks of arsenic in drinking water, and has made significant adjustments to provide a more quantitative evaluation of major sources of uncertainty discussed at proposal and emphasized by commenters from a number of different perspectives.

Today's rule, with a final MCL of 10 μg/L, reflects the application of several provisions under SDWA, the first of which generally requires that EPA set the MCL for each contaminant as close as feasible to the MCLG, based on available technology and taking costs to large systems into account. The 1996 SDWA amendments also require that the Administrator determine whether or not the quantifiable and nonquantifiable benefits of an MCL justify the quantifiable and nonquantifiable costs. This determination is to be based on the Health Risk Reduction and Cost Analysis (HRRCA) required under section 1412(b)(3)(C). The HRRCA must include consideration of seven analyses:

(1) The quantifiable and nonquantifiable benefits from treatment to the new MCL;

(2) The quantifiable and non quantifiable benefits resulting from reductions of co-occurring contaminants;

(3) The quantifiable and nonquantifiable costs resulting directly from the MCL;

(4) The incremental costs and benefits at the new MCL and alternatives considered;

(5) The health risks posed by the contaminant, including risks to vulnerable populations;

(6) Any increased risk resulting from compliance, including risks associated with co-occurring contaminants; and

(7) Any other relevant factor, including the uncertainties in the analyses and the degree and nature of risk.

Finally, the 1996 SDWA amendments provide new discretionary authority for the Administrator to set an MCL less stringent than the feasible level if the benefits of an MCL set at the feasible level would not justify the costs (section 1412(b)(6)) based on the HRRCA analysis. Today's rule establishing an MCL of 10 μg/L for arsenic is the second time EPA has invoked this new authority. (The first such time was in the final rule for uranium, which was published on December 7, 2000; EPA, 2000p.)

In addition to the feasible MCL of 3 μg/L, the Agency evaluated MCL options of 5 μg/L, 10 μg/L, and 20 μg/L and the various comments offered concerning these levels in response to the proposed rule. EPA has determined that a final MCL of 10 μg/L more appropriately meets the relevant statutory criteria referred to above, particularly after considering the following: Available information relating to the various health effects associated with arsenic; new analysis regarding the projected risk to the population of adverse health effects that would remain after implementation; the revised costs and benefits of the various options; the incremental costs and benefits; and the uncertainties in the benefit-cost and risk analyses. A summary of the results of the Agency's reanalysis of these various factors follows.

2. Consideration of Health Risks

The fifth and seventh HRRCA analyses focus on the health risks to be addressed by a new MCL. Estimates of risk levels to the population remaining

after the regulation is in place provide a perspective on the level of public health protection and associated benefits. SDWA clearly places a particular focus on public health protection afforded by MCLs. For instance, where EPA decides to use its discretionary authority after a determination that the benefits of an MCL would not justify the costs, section 1412(b)(6) requires EPA to set the MCL at a level that ''maximizes health risk reduction benefits at a cost that is justified by the benefits.'' (EPA does not believe the sixth HRRCA analysis, consideration of increased risk likely to result from compliance is a significant factor in connection with selection of a final MCL; rather, we believe that many of the appropriate technologies for reducing arsenic will reduce many other co-occurring inorganic contaminants as well thereby decreasing, rather than increasing risk.)

The Agency based its evaluation of the risk posed by arsenic at the MCL options of 3 µg/L, 5 µg/L, 10 µg/L and 20 µg/L on a number of considerations, including the bladder cancer risk analysis developed by the National Research Council (NRC) of the National Academy of Sciences (NRC, 1999); the NRC's qualitative assessment of other possible adverse health effects; the lung cancer risk analysis developed by Morales et al. (2000); and findings of other relevant national and international studies. This information included, but was not limited to, findings from epidemiological studies in South America cited in the NRC report (NRC, 1999) and a study of a population exposed to high levels of arsenic in Millard County, Utah conducted by Lewis, *et al.* (1999).

Among the factors EPA considered in choosing the final MCL was Congress' intent that EPA ''reduce * * * [scientific] uncertainty'' in promulgating the arsenic regulation reflected in section 1412(b)(12) arsenic research plan provisions and the legislative history on the arsenic provision (S. Rep. 104–169, 104th Cong., 1st Sess. at 39–40). The uncertainties in the analyses of costs, benefits and risks are also a factor required to be considered in the HRRCA. All assessments of risk are characterized by an amount of uncertainty. Some of this uncertainty can be reduced by collecting more data or data of a different sort. For other types of uncertainty, improved data or assessment methods can allow one to define the degree to which an estimate is likely to be above or below the ''true'' risk. For the arsenic risk assessment, there are several definable sources of uncertainty that were taken into account. These include, but are not limited to, the following:

- Uncertainty about the exact exposure of individuals in the study population to arsenic in drinking water, water used in cooking, and food;
- Uncertainties associated with applying data from a population in rural Taiwan to the heterogenous population of the U.S. (including differences in health status and diet between the Taiwanese and the U.S. population); and
- Uncertainties concerning precisely how a chemical causes cancer in humans (the mode of action) that affects assessments of the extent and severity of health effects at low doses.

Section III.D. of the preamble to today's final rule provides a detailed explanation of how these uncertainties associated with the risk analysis were taken into account in developing a revised estimate of the risk of arsenic in drinking water. Based on comments and available information, the Agency has focused, in particular, on the first uncertainty bullet, and made two adjustments to its risk analysis to reduce uncertainty and more accurately apply data from the Taiwan study to the U.S. population. EPA has revised its quantified estimate of the risks of arsenic in drinking water to adjust for exposure to arsenic in both cooking water and food in the Taiwanese study and has also developed a risk range for the combined effects of bladder and lung cancer to reflect the scope of uncertainty underlying these estimates. Thus, one of the previously listed uncertainties has specifically been taken into account quantitatively, while others continue to be considered in a qualitative sense.

In EPA's judgment, use of a risk range more clearly supports a qualitative consideration and recognition of the uncertainties that are inherent in any risk analysis that substantially relies upon epidemiological information. EPA believes that the health risk analysis presented in section III.D. of today's rule comprises a plausible range of likely risk associated with various concentrations of arsenic in drinking water. As just suggested, we do not believe it is appropriate to select a central or ''best estimate'' of the risk, due to the uncertainties associated with the underlying health effects studies and the various plausible assumptions used in considering these uncertainties for our risk analysis. This revised analysis of risks was used in recalculating the benefits attributable to reducing arsenic in drinking water from its present levels. EPA also recognizes that the latter two bulleted sources of uncertainty may operate to reduce the risk estimates if it were possible to account for them quantitatively.

3. Comparison of Benefits and Costs

Under HRRCA analyses one and two, the Agency must consider both quantifiable and nonquantifiable health risk reduction benefits. Benefits considered in our analysis include those about which quantitative information is known and can be monetized as well as those which are more qualitative in nature (such as some of the non-cancer health effects potentially associated with arsenic) and which cannot currently be monetized. Important assumptions inherent in EPA's revised analysis of the benefits estimates include the value of a statistical life and willingness to pay to avoid illness. These assumptions and various adjustment factors considered for our benefits analysis are explained in detail in section III.E. of this preamble.

EPA considered the relationship of the monetized benefits to the monetized costs for each the regulatory levels it considered. While strict equality of monetized benefits and costs is not a requirement under section 1412(b)(6)(A), this relationship is an important consideration in the regulatory development process. The monetized costs and monetized benefits of this final rule, and the methodologies used to calculate them, are discussed in detail in section III. E. of this preamble and in the arsenic Economic Analysis.

EPA believes, however, that reliance on only an arithmetic analysis of whether monetized benefits outweigh monetized costs is inconsistent with the statute's instruction to consider both quantifiable and nonquantifiable costs and benefits. The Agency therefore examined and considered qualitative and non-monetized benefits in establishing the final MCL, as well as other factors discussed previously. These benefits are associated with avoiding certain adverse health impacts known to be caused by arsenic at higher concentrations, which may also be associated with low level concentrations, and include skin and prostate cancer as well as cardiovascular, pulmonary, neurological and other non-cancer effects. (These health effects are discussed in Section III.D. of this preamble.)

Other potential benefits not monetized for today's final rule include customer peace of mind from knowing drinking water has been treated for arsenic and reduced treatment costs for contaminants that may be co-treated with arsenic. (For example, increased use of coagulation and micro filtration

by surface water systems will offer benefits with respect to removal of microbial contaminants and disinfection byproducts.)

HRRCA analyses three and four require EPA to consider the costs of compliance with the rule and the incremental costs and benefits. EPA has also revised the cost of compliance estimates associated with the various possible regulatory levels considered for today's final rulemaking. The central estimate of costs has risen modestly since the proposed rule based on our further analysis of the information and data provided by commenters. However, in response to comments, we have also performed a sensitivity analysis that addresses a number of variables in our analysis and which indicates that the costs of compliance could exceed our central estimate by as much as 22%.

In comparing monetized costs and benefits, we conducted several types of analyses, including:

- Comparison of total national costs and benefits (Table III.E–7);
- Analysis of incremental costs and benefits (comparing one regulatory option to another) (Table III.E–9);
- Estimates of net benefits (Table III.E–8); and
- Examination of benefit-cost ratios (Table III.E–8).

Detailed descriptions of our analyses appear in section III.E. of this preamble and in the Economic Analysis supporting today's rule. Our consideration of these analyses in support of the rationale for the final MCL is discussed below.

4. Rationale for the Final MCL

The rationale for the final MCL promulgated with today's rule is based on the HRRCA analyses outlined previously and the statutory criteria for setting an alternative (higher than feasible) MCL under section 1412(b)(6). These analyses include:

- A revised risk analysis of arsenic in drinking water;
- A revised analysis of total costs;
- A revised analysis of total benefits;
- A comparison of costs and benefits using various metrics at various MCL options (including incremental costs and benefits); and
- Other pertinent factors (including uncertainties and the degree and nature of risk).

In the proposed rule, EPA indicated a preference for a standard at 5 μg/L, but solicited comment on MCL options of 3 μg/L, 10 μg/L, and 20 μg/L, depending upon how uncertainties were addressed in the risk analysis as well in the calculation of costs and benefits. However, EPA also noted that, between the time of proposal and promulgation of the final rule, it would work to resolve as much of this uncertainty as possible. As described earlier, the principal revised analyses conducted since the rule was proposed and considered in our selection of the final MCL include: A revised analysis of the uncertainties of the health effects that has generated a revised risk range for the various MCL options considered; a revised range of benefits associated with our current estimates of the risks; and a revised analysis of costs, including uncertainty and sensitivity analyses. These revised analyses allow an updated comparison of the costs and benefits for the various regulatory options considered.

a. General considerations. As explained in section III.E. of today's preamble, both our benefits and cost estimates involve ranges, rather than point estimates, due to a variety of factors. Thus, our consideration of costs and benefits involved an examination and comparison of these ranges. As can be seen from Table III.E–7, both total costs and benefits increase as one examines progressively lower (*i.e.,* more stringent) regulatory options compared to higher options. However, the benefits and costs do not increase proportionately across the range of regulatory options as shown by a comparison of net benefits (defined as costs minus benefits). Progressively more stringent regulatory options become considerably more expensive, from a cost standpoint, than the corresponding increases in benefits, as reflected in decreasing net benefits. (see Table III.E–8.)

b. Relationship of MCL to the feasible level (3 μg/L). The MCL must be set as close as feasible to the MCLG, unless EPA invokes its discretionary authority under section 1412(b)(6) of SDWA to set an alternative MCL, which must then be set at a level that maximizes health risk reduction benefits at a cost that is justified by the benefits. As explained earlier in this preamble, the MCLG is zero and the feasible level is 3 μg/L. The Agency believes that there are several important considerations in examining the feasible level. In comparing the benefits and the costs at this level (see Table III.E–7), we note that it has the highest projected total national costs (relative to the other MCL options considered). In addition, while the benefits are highest at this level relative to the other MCL options, both the net benefits and the benefit/cost disparity at the feasible level are the least favorable of the regulatory options considered. For these reasons, we believe benefits of the feasible level do not justify the costs. Almost all commenters agreed with this conclusion in the proposal.

c. Reanalysis of proposed MCL and comparison to final MCL. Based on substantial public comment, EPA has reexamined the proposed MCL of 5 μg/L. In comparing this level to 10 μg/L, we note that both the net benefits and the benefit-cost relationships are less favorable for 5 μg/L as compared to 10 μg/L. Total national costs at 5 μg/L are also approximately twice the costs of an MCL of 10 μg/L. At 10 μg/L, EPA notes that the lung and bladder cancer risks to the exposed population after the rule's implementation are within the Agency's target risk range for drinking water contaminants of 1×10^{-6} to 1×10^{-4} or below. EPA recognizes that there is uncertainty in this quantification of cancer risk (as well as other health endpoints) and this risk estimate includes a number of assumptions, as discussed previously. EPA did not directly rely on the risk range in selecting the final MCL, since it is not part of the section 1412(b)(6) criteria; however, it is an important consideration, because it has a direct bearing on our estimates of the benefits of the rule.

d. Consideration of higher MCL options. EPA does not believe an MCL less stringent 10 μg/L is warranted from the standpoint of benefit-cost comparison. While total national costs associated with 20 μg/L are the lowest of the regulatory options considered, benefits are also the lowest of these options. Both regulatory options of 10 μg/L and 20 μg/L have relatively favorable benefit-cost relationships relative to lower regulatory options but are not significantly different from one another based on this comparison metric. However, the incremental, upper-bound benefits at 10 μg/L are more than twice those of 20 μg/L; and 10 μg/L is clearly the more protective level. Thus, we do not believe that an MCL of 20 μg/L would ''maximize health risk reduction benefits'' as required for an MCL established pursuant to section 1412(b)(6).

e. Conclusion. Strict parity of monetized costs and monetized benefits is not required to find that the benefits of a particular MCL option are justified under the statutory provisions of section 1412(b)(6) of SDWA. However, EPA believes that, based on comparisons of cost and benefits (using the various benefit-cost comparison tools discussed), the monetized benefits of a regulatory level of 10 μg/L best justify the costs. In addition, as discussed in section III.D. and elsewhere in today's preamble, our further qualitative consideration of the various sources of

uncertainty in our understanding of arsenic since the proposal (e.g., such as that surrounding the mode of action), has led us to conclude that our estimate of risk (for the risks we have quantified) is most likely an upper bound of risks and that the higher MCL of 10 μg/L is appropriate. Finally, as discussed in section III.E. of this preamble EPA believes that there are a number of not yet quantified adverse health effects and potentially substantial non-monetized benefits at 10 μg/L that increase the overall benefits at this level.

In summary, based on our reanalysis of costs, benefits, and health risk reduction, and factoring in the uncertainties in these analyses and the degree and nature of risk, EPA believes the final MCL of 10 μg/L represents the level that best maximizes health risk reduction benefits at a cost that is justified by the benefits and that the other regulatory options considered in the proposed rule do not satisfy the statutory requirements of section 1412(b)(6) of SDWA. We are therefore exercising our discretionary authority under the statute to establish an MCL at a level higher than the feasible level and setting that level at 10 μg/L.

IV. Rule Implementation

A. What Are the Requirements for Primacy?

States must revise their programs to adopt any part of today's rule that is more stringent than the approved State program. Primacy revisions must be completed in accordance with 40 CFR 142.12, and 142.16. States must submit their revised primacy application to the Administrator for approval. A State's request for final approval must be submitted to the Administrator no later than 2 years after promulgation of a new standard unless the State requests and is granted an additional 2-year extension.

For revisions of State programs, § 142.12 requires States to submit, among other things, ''[a]ny additional materials that are listed in § 142.16 of this part for a specific EPA regulation, as appropriate.'' Today's rule does not require States to submit information in § 142.16(e) for primacy revisions associated with the revised arsenic MCL. The final rule notes that § 142.16(e) primacy revision information will only be required for new contaminants, not revisions of existing regulated contaminants.

B. What Are the Special Primacy Requirements?

Today's rule adds special primacy requirements in § 142.16(j) and § 142.16(k) to the State special primacy requirement section. Section 142.16(j) clarifies that for an existing regulated contaminant such as arsenic, States may indicate in the primacy application that they will use the existing monitoring plans and waiver criteria approved for primacy under the National Primary Drinking Water Standards (NPDWRs) for organic and inorganic contaminants (the Phase II/V rules). Alternatively, the State may inform the Agency in its application of any changes to the monitoring plans and waiver procedures.

Section 142.16(k) requires States to establish initial monitoring requirements for new systems and new sources. Many States already have developed monitoring programs for new systems and for systems that are using new sources of water. To meet the requirements of § 142.16(k), States that have existing requirements may simply explain to EPA in their primacy revision package their monitoring schedule and how the State can ensure that all new systems and new sources will comply with the existing MCLs and monitoring requirements. Some States may wish to explain that monitoring for new systems is established on a case-by-case basis. States should explain the factors that are considered as case-by-case determinations are made.

When a State develops or modifies an initial monitoring program for new systems and new sources, it should ensure that the program reflects the contaminant(s) of concern for that State, known contaminant use, historical data, and vulnerability. Because of varying contaminant uses and sources, some contaminants occur at higher levels in some regions of the country than in other regions. Additionally, the concentrations of some contaminants are known to show clear seasonal peaks, while others remain constant throughout the year. For example, some States may be concerned with atrazine and require multiple samples during a specified vulnerable period (*e.g.,* May 1–July 31), while another State may only require one sample for the entire year. Alternatively, another State may be concerned about trichloroethylene and require four quarterly samples.

C. What Are the State Recordkeeping Requirements?

The standard record keeping requirements for States under SDWA apply to the arsenic rule (§ 142.14). Today's rule does not modify or require additional recordkeeping requirements. States with primacy must keep all records of current monitoring requirements and the most recent monitoring frequency decision pertaining to each contaminant, including the monitoring results and other data supporting the decision, and the State's findings based on the supporting data and any additional bases for such decision. These records must be kept in perpetuity or until a more recent monitoring frequency decision has been issued.

D. What are the State Reporting Requirements?

Currently, States with primary enforcement responsibility must report to EPA information under § 142.15 regarding violations, variances and exemptions, and enforcement actions and general operations of State public water supply programs. Today's rule does not modify or require additional reporting requirements. The State reporting requirements that will apply to the arsenic standard are the same as all other regulated inorganic contaminants.

E. When Does a State Have To Apply for Primacy?

To maintain primacy for the Public Water Supply Supervision (PWSS) program and to be eligible for interim primacy enforcement authority for future regulations, States must adopt today's final rule. A State must submit a request for approval of program revisions that adopt the revised MCL and implement regulations within two years of promulgation, unless EPA approves an extension per § 142.12(b). Interim primacy enforcement authority allows States to implement and enforce drinking water regulations once State regulations are effective and the State has submitted a complete and final primacy revision application. To obtain interim primacy, a State must have primacy with respect to each existing NPDWR. Under interim primacy enforcement authority, States are effectively considered to have primacy during the period that EPA is reviewing their primacy revision application.

F. What Are Tribes Required To Do Under This Regulation?

Currently, the Navajo Nation is the only Tribe with primacy for all the National Primary Drinking Water Regulations, and it will be subject to the same requirements as a State. There are no other Federally recognized Indian tribes with primacy to enforce any of the drinking water regulations. EPA's Regions have responsibility for implementing the rules for all Tribes except the Navajo Nation under section 1451(a)(1) of SDWA. To obtain primacy authority for the revised arsenic MCL, Tribes must submit a primacy

application to regulate inorganic contaminants (*i.e.*, the Phase II/V rule).

V. Responses to Major Comments Received

A. General Comments

1. Sufficiency of Information and Adequacy of Procedural Requirements To Support a Final Rule

A number of commenters challenged EPA's basis for promulgating a final rule, arguing that (1) there was insufficient technical information provided with the proposed rule, (2) various expert technical evaluations were not adequately considered, or (3) procedural requirements (*e.g.*, Unfunded Mandates Reform Act (UMRA), Small Business Regulatory and Enforcement Flexibility Act (SBREFA)) have not been fully satisfied. EPA respectfully disagrees, and we believe that the record of our actions is sufficient to support a final rulemaking. Other portions of the preamble to today's rule explain the technical evaluations performed in support of the proposed rule and the revised analyses conducted, based on comments and information submitted in response to the proposal. EPA recognizes that various questions about different aspects of this rulemaking have been the subject of an array of analyses and reports by various investigators. This area of investigation has also been dynamic, and there will undoubtedly be additional analyses after promulgation of the final rule that the Agency will need to consider in light of the requirement to periodically review (and revise as appropriate) all final drinking water regulations as provided by section 1412(b)(9) of SDWA. However, we believe that we have fully and appropriately considered all available and relevant information for the final rulemaking and do not need to repropose as several commenters suggest. We also believe that we have fully satisfied the procedural requirements of the pertinent statutory and Executive Order requirements. Section VI. of the preamble to today's final rule discusses these procedural requirements in more detail.

2. Suggestions for Development of an Interim Standard

Several commenters advocated an interim standard in view of the uncertainties associated with the health effects data, the costs of compliance with the final rule, and concerns over the interpretation of the ''anti-backsliding'' provision of SDWA related to review and revision of existing standards (section 1412(b)(9)). While EPA appreciates these concerns, we do not believe that they provide a sufficient basis for concluding that an interim standard be set. We agree with the recommendation of the National Academy of Sciences that there is sufficient information available now to develop a new lower drinking water standard for arsenic. We further believe that available information is sufficient to support a final, rather than an interim, standard. Finally, there is simply no authority in SDWA to establish an interim standard that does not comply with sections 1412(b)(4) and 1412(b)(6). However, we are committed to reviewing and revising, if appropriate, the final standard every six years (or sooner, if pertinent new information becomes available). In so doing, we must ensure that the revised standard provides for ''equal or greater protection to the health of persons'' as compared to the standard it replaces.

3. Public Involvement and Opportunity for Comment

Some commenters questioned whether the extent of public involvement in the development of today's rule was sufficient. Some commenters also suggested that the Agency use a negotiated rulemaking process for the final rule pursuant to the Federal Advisory Committee Act (FACA). EPA believes that public involvement throughout the development of this rule, has been extensive and far-reaching. As discussed in section I.N. earlier in this preamble, during the period 1996–2000, EPA conducted a number of Agency workgroup meetings on arsenic and advertised six stakeholder meetings (held in five locations) in the **Federal Register**. Five States also provided written comments on implementation issues during the workgroup process. Representatives of eight Federal agencies, 19 State offices, 16 associations representing the breadth of the public water system community, 13 corporations, 14 consulting engineering companies, two environmental organizations, three members of the press, 37 public utilities and cities, four universities, and one Indian tribe attended the stakeholder meetings on arsenic. EPA presented an overview of the arsenic rulemaking to over 900 Tribal representatives in 1998 and provided more detailed information in 1999 to 25 Tribal council members and water utility operators from 12 Indian tribes. In addition, EPA provided updates on our rulemaking activities at national and regional meetings of various groups and trade associations. We also participated in the American Water Works Association's (AWWA) technical workgroup meetings. As part of the Small Business Regulatory and Enforcement Flexibility Act (SBREFA) process, EPA also received valuable input from discussions with small entity representatives during SBREFA consultations for the arsenic rule. EPA obtained recommendations from the National Drinking Water Advisory Council (NDWAC) on the rule as a whole as well as on our approach benefits analysis and small systems affordability. We also posted discussion papers produced for our stakeholder interactions on the EPA Office of Ground Water and Drinking Water (OGWDW) Internet site and sent them directly to participants at stakeholder meetings and others who expressed interest. EPA also received over 1,100 comments on the June 22, 2000 proposed rule. EPA took these comments into consideration in developing today's final rule.

EPA agrees that the FACA-negotiated rulemaking process has been an effective one in the past for other complex rulemakings. However, EPA does not believe that a negotiated rulemaking at this point is consistent with the deadlines set by Congress for this rulemaking. We would point out, however, that the Agency has taken a number of active steps to ensure broad-based stakeholder involvement, as described previously, and has solicited expert points of view outside the Agency. Some of these actions included a charge to the National Academy of Sciences (NAS) to fully explore the most current health effects issues. A charge was also given to EPA's Science Advisory Board (SAB) to review key aspects of the proposed rule and EPA's underlying rationale. EPA believes that this combination of actions ensured that full and complete stakeholder involvement occurred, and that further negotiations would be unnecessary.

4. Relation of MCL to the Feasible Level

Several commenters questioned the feasible level of 3 μg/L contained in the proposed rule. Commenters believed that EPA has not accurately assessed the capabilities of laboratories to achieve the practical quantitation level (PQL) or of treatment technologies to reliably and consistently treat down to the feasible level. EPA disagrees and still believes that 3 μg/L is feasible from the standpoints of both analytical methods and treatment technologies. EPA discusses these issues in more detail in section III.B. of the preamble to today's final rule. Many of the comments on the proposed rule were concerned by the close proximity of the proposed

standard (5 μg/L) to the proposed feasible level (3 μg/L). However, comments regarding whether or not the proposed standard of 5 μg/L is feasible are not particularly germane to the setting of the final standard, which is well above any level identified by most commenters as being feasible.

5. Relationship of MCL to Other Regulatory Programs

Many commenters expressed concerns about the possible impact of a new revised drinking water standard for arsenic on other regulatory standards for arsenic. In particular, several commenters recommended that EPA consider the prospective costs of future Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) site clean-up actions, RCRA hazardous waste management costs, or national permit discharge elimination system (NPDES) permits to the extent that a new arsenic in drinking water standard leads to more stringent regulatory actions under those respective statutes. EPA disagrees and notes that SDWA specifically excludes from consideration under the HRRCA such prospective, ancillary costs in developing a drinking water standard (see section 1412(b)(3)(C) of SDWA).

6. Relation of MCL to WHO Standard

Several commenters on the proposed rule expressed a concern that the drinking water standard in the U.S. should be no more stringent than the standard developed for the World Health Organization (WHO). This comment dealt primarily with the proposed level of 5 μg/L and does not apply to the final MCL of 10 μg/L, which is identical to the WHO standard. However, while the thrust of the comment is now moot, EPA notes that the basis for the final MCL and the WHO standard are different. EPA's standard is based on consideration of all of the risk management factors required to be evaluated under SDWA (*e.g.*, risk, costs, benefits, treatment technology and analytical method capabilities, small systems affordability, etc.) while the WHO standard is based solely on health effects, without regard to any implementation considerations. Further, the health basis for the WHO standard is primarily an assessment of arsenic-induced skin cancer, whereas there are a number of health endpoints of concern in EPA's analysis including lung and bladder cancer. In summary, the two levels (the WHO standard and EPA's final MCL) happen to be the same but a possible future change in the WHO standard would not necessarily require a revision to EPA's MCL, for the reasons just discussed.

7. Regulation of Non-Transient Non-Community Water Systems (NTNCWSs)

Several commenters objected to the approach outlined in the proposed rule for addressing NTNCWSs (monitoring and reporting only) and pointed out the need for consistency in coverage of NTNCWSs in EPA's rules. These commenters noted that the rules originally promulgated in 1976 (arsenic and radionuclides) have not required coverage of NTNCWSs, whereas more recently promulgated rules have. In addition, EPA's proposed radon rule suggested not covering NTNCWSs and the recently promulgated radionuclides rule did not require coverage of NTNCWSs, but instead deferred this issue for future resolution. EPA agrees that the outcomes of its recent decisions with respect to coverage of NTNCWSs have been different. However, we considered the merits of each rulemaking on a case-by-case basis using a consistent set of criteria, namely the cost/benefit analysis required under section 1412(b)(4).

For the proposed arsenic rule, EPA carefully examined the risks posed by NTNCWSs and concluded preliminarily that the risks were such that, without coverage, consumers of water from NTNCWSs were projected to be within the target risk range. EPA acknowledges, however, that there is uncertainty associated with its information about exposure patterns for consumers of water from NTNCWSs and the demographics of these facilities. Thus, our understanding of the health risks (and associated possible benefits of removal) to consumers of water from NTNCWSs is uncertain. In the case of arsenic, EPA believes the additional uncertainty in the overall risk analysis argues against any finding at this point that these systems are substantially different in terms of exposure than community water systems. EPA also believes the decision to cover these facilities in today's rule is supported by consideration of the risks to certain subpopulations within the general population, such as children who consume water at day care facilities or schools that are served by NTNCWSs.

Concerns were also expressed about whether commenters were provided with sufficient information about the costs of full coverage. These commenters noted that EPA could not, without violating the notice and comment provisions of the Administrative Procedure Act, move to full coverage of these facilities in the final rule. EPA disagrees with this comment. The proposal clearly indicated that full coverage of NTNCWSs was an option on which comment was being requested and the supporting documents provided complete information about the costs of full coverage. (EPA, 2000h, see Table 6–9).

8. Extension of Effective Date for Large Systems

Commenters were generally supportive of EPA's proposed national determination (pursuant to section 1412(b)(10) of SDWA) that water systems covered by the rule, serving less than 10,000 persons, and needing to make capital improvements to comply with the new standard would need more than 3 years from the time of rule promulgation to accomplish this. Thus, the proposed rule suggested allowing a two-year extension for compliance with the new standard, beyond the three years provided after the promulgation date. However, several commenters suggested that this finding and the additional two years for compliance should be applicable to all systems, including those serving more than 10,000 persons, since extensive planning, design, and new equipment will also generally be needed by larger systems in a similar situation to comply with the new standard. EPA was persuaded by these comments, and has, as part of the implementation requirements for today's final rule, elected to apply this two-year extension to all facilities covered by today's rule.

B. Health Effects of Arsenic

1. Epidemiology Data

Many commenters were critical of the Taiwan epidemiologic study as a basis for EPA decision making, quantitative dose-response assessment, extrapolation of the dose-response from the observed range of exposure, and application of the same risk estimate to the U.S. population. No commenters challenged the EPA conclusion that this study and the other epidemiologic studies together show that arsenic is carcinogenic to humans. Some supported the risk analysis in the proposed rule and the notice of data availability (NODA) because it is relatively risk averse; others had criticisms.

The following issues were raised about the use of the Taiwan risk assessment to represent U.S. risk: Arsenic exposure from food and via cooking with contaminated water in Taiwan is higher than is typical for the U.S. population; exposure groupings were made at the village level and were assigned the median of the

concentration of arsenic measured in the wells serving that village; not all wells serving all villages were measured and well concentrations varied seasonally; the Taiwan population was a rural population that was not well nourished, having deficits of selenium, possibly methionine or choline (methyl donors), zinc and other essential nutrients; and the Taiwan population may have unknown differences in genetic polymorphisms from the U.S. population. Similar concerns were raised about the South American studies.

Commenters also cited studies in the U.S. (Lewis *et al.*, 1999, Utah population) and Europe (Buchet *et al.*, 1999; Kurttio *et al.*, 1999) as support for the position that the risks from the Taiwan study overestimated the risks in the U.S.

Many commenters were convinced that the Lewis *et al.* (1999) study of a U.S. population is the best study to use in estimating U.S. risk. Since the Utah study did not observe cancer outcomes that one would expect if risks were as large as the Taiwan or South American studies suggest, these commenters believe that risks estimates from studies of populations outside of the U.S. overestimate U.S. risks.

Scientists generally agree that high doses of arsenic are associated with various cancer and noncancer health effects in humans. Epidemiology studies in humans demonstrate that arsenic induces skin and internal (*e.g.,* bladder and lung) cancers and non-cancer effects such as skin keratoses and vascular abnormalities when ingested in drinking water at high doses.

The epidemiologic investigations that have been most thorough in investigating the exposure and effects on humans of ingesting ground water contaminated with arsenic are those of populations in Taiwan (Chen *et al.,* 1985; 1988; 1992; Wu *et al.,* 1989), Argentina (Hopenhayn-Rich *et al.,* 1996; 1998), Chile (Smith *et al.,* 1998), and the U.S. (Lewis *et al.,* 1999). All of these and other, smaller studies have been considered in the Agency's deliberations on this rule.

The studies from Taiwan, Chile, Argentina and the U.S. employed the proper endpoints, selected correct study groups and grouped the people into discrete exposure groups. They also used acceptable methods and accounted for some known confounders. These studies, due to their relative sizes, varied in their statistical power to detect differences. The Utah study (Lewis *et al.,* 1999) contained 4,000 people while the Taiwan study had approximately 40,000 people and the two South American studies each had over 200,000 people. All of these epidemiology studies were ecological and retrospective studies. The Taiwan and South American studies had no individual exposure data. The Utah study associated persons with wells that had measured concentrations though exposure was calculated based on both level of arsenic and length of exposure. The Utah study followed exposed individuals to discern causes of later disease through carefully kept church records.

The Agency chose to make its quantitative estimates of risk based on the Taiwan study. This choice was endorsed by the EPA Science Advisory Board (SAB, 2000q; NRC, 1999). The database from Taiwan has the following advantages: Mortality data were drawn from a cancer registry; arsenic well water concentrations were measured for each of the 42 villages; there was a large, relatively stable study population that had life-time exposures to arsenic; there are limited measured data for the food intake of arsenic in this population; age- and dose-dependent responses with respect to arsenic in the drinking water were demonstrated; the collection of pathology data was unusually thorough; and the populations were quite homogeneous in terms of lifestyle. Studies in Argentina and Chile also showed lung and bladder risk of similar magnitude at comparable levels of exposure. EPA recognizes that there are problems with the Taiwan study that introduce uncertainties to the risk analysis such as: the ecological study design; the use of median exposure data at the village level; the low income and relatively poor diet of the Taiwanese study population (high levels of carbohydrates, low levels of protein, selenium and other essential nutrients); and high exposure to arsenic via food and cooking water.

As urged by many commenters, the Agency has considered and made adjustments in its dose-response assessment to reflect the quantitative effect of the high Taiwanese exposure to arsenic via food and cooking water. The Agency made an adjustment to the lower bound risk estimates to take into consideration the effect of exposure to arsenic through water used in preparing food in Taiwan. In addition, an adjustment was made to the lower bound risk estimates to take into consideration the relatively high arsenic concentration in the food consumed in Taiwan as compared to the U.S. We also considered several additional factors qualitatively in our final decision. These included the effect of the median well exposure data from the Taiwan study and the effects of nutritional factors such as selenium and methyl donors. However, we did not feel that there were sufficient data to account for these factors quantitatively.

The U.S. population cannot be considered to be made up entirely of well-nourished, genetically uniform persons. People of the Asian and Pacific Islander group make up about 4% (approximately 11 million) of the more than 270 million people in the U.S. (U.S. Census Bureau, 2000). In addition, there is a significant portion of the U.S. population living in poverty with poor nutrition. Thus, the Agency continues to believe that the Taiwan study is appropriate as a basis for risk assessment. The fact that the whole of the Taiwanese population was nutritionally vulnerable is a factor that the Agency has considered qualitatively as an uncertainty in risk assessment that may on average lead to overestimation of risk when applied to the U.S.

The Utah study (Lewis *et al.,* 1999) did not find any excess bladder or lung cancer risk after exposure to arsenic at concentrations of 14 to 166 µg/L. An important feature of the study is that it estimated excess risk by comparing cancer rates among the study population in Millard County, Utah to background rates in all of Utah. But the cancer rates observed among the study population, even those who consumed the highest levels of arsenic, were significantly lower than in all of Utah. This is evidence that there are important differences between the study and comparison populations besides their consumption of arsenic. One such difference is that Millard County is mostly rural, while Utah as a whole contains some large urban populations. Another difference is that the subjects of the Utah study were all members of the Church of Jesus Christ of Latter Day Saints, who for religious reasons have relatively low rates of tobacco and alcohol use. For these reasons, the Agency believes that the comparison of the study population to all of Utah is not appropriate for estimating excess risks. An alternative method of analysis is to compare cancer rates only among people within the study population who had high and low exposures. The Agency performed such an analysis on the Utah data, using the statistical technique of Cox proportional hazard regression (U.S. EPA, 2000x; Cox and Oakes, 1984). The results showed no detectable increased risk of lung or bladder cancers due to arsenic, even among subjects exposed to more than 100 µg/L on average. On the other hand, the excess risk could also not be distinguished statistically from the

levels predicted by model 1 of Morales *et al.* (2000). These results show that the Utah study is not powerful enough to estimate excess risks with enough precision to be useful for the Agency's quantitative arsenic risk analysis. Furthermore, the SAB noted that ''(a)lthough the data provided in published results of the Lewis, *et al.,* 1999 study imply that there was no excess bladder or lung cancer in this population, the data are not in a form that allows dose-response to be assessed dependably'' (EPA, 2000q). Other studies in the U.S. (Morton *et al.,* 1976; Valentine *et al.,* 1992; Wong *et al.,* 1992) and Europe (Buchet *et al.,* 1999; Kurttio *et al.,* 1999) were also considered in EPA's evaluation of the risk from arsenic. However, these studies were not sufficient to develop a dose-response relationship.

2. Dose-Response Relationship

Numerous comments were received about the quantitative estimation of potential cancer risks to U.S. populations from drinking water exposure to arsenic. Concerns were raised about the extrapolation of the dose (exposure)—response relationship observed in a study of cancer incidence in an arseniasis-endemic area of Taiwan with high levels of arsenic in water (Chen *et al.,* 1988; Wu *et al.,* 1989; Chen *et al.,* 1992) to estimate potential response in the U.S. to arsenic in water at lower levels.

Some commenters asked whether it is appropriate to assume a linear dose response for arsenic given that arsenic does not appear to be directly reactive with DNA. Other commenters urged strict adherence to the linear approach, and recommended choosing an MCL that is below the 1/10,000 level of estimated risk based on that approach.

Some commenters also noted that independent scientific panels (EPA, 2000q; NRC, 1999; EPA, 1997e; EPA, 1988) who have considered the Taiwan study have raised the caution that using the Taiwan study to estimate U.S. risk at lower levels may result in an overly conservative estimation of U.S. risk. The independent panels have each said that below the observed range of the high level of contamination in Taiwan the shape of the dose-response relationship is likely to be sublinear. Thus, an assumption that the effects seen per dose increment remain the same from high to low levels of dose may overstate the U.S. risk. Some commenters have urged that the Agency model the dose-response relationship as a sublinear one, rather than as a linear one as in the proposal and NODA for the rule. These commenters consider adherence to the linear model as a failure of the Agency to use the best available, peer-reviewed science as required by SDWA.

After consideration of the arguments made by the commenters, the Agency continues to believe that the best approach, given the uncertainties associated with the available data, is to use the linear approach to set the MCLG for arsenic. In the proposal and the NODA, EPA discussed the fact that the available data on arsenic's carcinogenic mode of action point to several potential modes of action, but which one is operative is unknown. For this reason, the data do not support use of an alternative to linearity. The Agency recognizes that the dose-response relationship may be sublinear. The Agency has considered both a linear extrapolation and a nonlinear approach in the selection of an MCL in this final rule. (see section III.D.1.g. and the comment response document for a thorough discussion of the Agency's position on the dose-response assessment for arsenic.)

3. Suggestions That EPA Await Further Health Effects Research

Several commenters expressed the opinion that EPA should delay setting a standard for arsenic until more research studies have been completed. These commenters focused on research areas such as health effects (especially at low doses), the mode of action, and the dose-response curve. Other commenters questioned EPA's support of new research and tracking of ongoing research.

Since developing the Arsenic Research Plan as required by the 1996 SDWA amendments, EPA and stakeholders have established a substantial research program. Significant research has been completed, and further research is underway. EPA is tracking the progress of ongoing research and will make research results available to the public. EPA is committed to issuing the arsenic regulation based on best available science and believes that the research currently available is sufficient to do so.

EPA believes that the research underway may provide important new data for future rulemakings on arsenic. However, EPA does not believe that a determination on the arsenic MCL must be delayed until this research is complete. Indeed, the U.S. Court of Appeals for the District of Columbia Circuit found that EPA:

> cannot reject the ''best available'' evidence simply because of the possibility of contradiction in the future by evidence unavailable at the time of action—a possibility that will always be present'' and that ''[a]ll scientific conclusions are subject to some doubt; future hypothetical findings always have the potential to resolve the doubt. What is significant is Congress's requirement that the action be taken on the basis of the best available evidence at the time of rulemaking. The word ''available'' would be senseless if construed to mean ''expected to be available at some future date'' (*Chlorine Chemistry Council* v. *EPA,* 206 F.3d 1286, 1290–91 (D.C. Cir. 2000)).

In the future, as part of the 6-year review process, the Agency will evaluate new data to determine if the MCLG and/or MCL promulgated in today's regulation should be revised.

Research pertaining to arsenic in the drinking water is a priority for the EPA. In addition, EPA supports and encourages other organizations to sponsor new epidemiology and toxicology studies on arsenic. The nature of scientific research is that as each study attempts to address or resolve a particular issue, it also raises more questions for investigation. EPA recognizes that even when the ongoing set of studies are complete, more are likely to follow. Uncertainty is inherent in science; at no point will ''all'' research be finished and ''all'' questions be answered.

4. Sensitive Subpopulations

Some commenters encouraged EPA to set the arsenic standard as low as possible to protect vulnerable populations. These commenters felt that EPA should consider human development and reproduction and variously defined vulnerable populations as persons with immune, cardiovascular, and nervous system disorders, children, low-income people, Native Americans, diabetics, and geriatric populations.

The 1996 SDWA amendments include specific provisions in section 1412(b)(3)(C)(i)(V) that require EPA to assess the effects of a contaminant on the general population and on groups within the general population such as infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subpopulations that are identified as likely to be at greater risk of adverse health effects due to exposure to contaminants in drinking water than the general population. The NRC subcommittee (NRC, 1999) noted that there is a marked variation in susceptibility to arsenic-induced toxic effects which may be influenced by factors such as genetic polymorphisms (especially in metabolism), life stage at which exposures occur, sex, nutritional status, and concurrent exposures to other agents or environmental factors. EPA shares the view of the NRC report

which concluded that there is insufficient scientific information to permit separate cancer risk estimates for potential subpopulations such as pregnant women, lactating women, and children and that factors that influence sensitivity to or expression of arsenic-associated cancer and noncancer effects need to be better characterized. The EPA agrees with NRC that there is not enough information to make risk conclusions regarding any specific subpopulations. However, EPA believes it is appropriate to consider effects on infants due to their greater consumption of water per body weight and is considering whether to issue a health advisory that will address this issue.

A study of a population in Chile exposed to about 800 µg/L in its drinking water for a period of years showed significant association with this exposure and fetal and infant mortality that declined to background when the water was treated to remove arsenic. This study was cited by a commenter as indicating more general sensitivity of fetuses and infants. The dose was one that had a range of significant arsenic toxicity effects on the adult population. It is logical that fetuses of mothers so exposed would be affected and infants would have received several times the adult exposure per kg body weight and, consequently, more toxicity. This study does not indicate disproportionate effects on fetuses or infants at low doses. Once the water was treated the effects declined to background (Hopenhayn-Rich *et al.,* 2000).

5. EPA's risk analysis

Several commenters felt that EPA did not follow the NRC recommendations that ''the final calculated risk should be supported by a range of analyses over a fairly broad feasible range of assumptions'', misinterpreted the NRC report, or relied solely on the NRC report and thus did not do an appropriate risk assessment for arsenic. Others viewed the NRC report as lacking peer review or as being politically motivated.

The SAB (EPA, 2000q, pgs. 2–3) discussed EPA's use of the NRC report. In the cover letter to the Administrator they stated:

> * * * The NRC also noted a number of factors that likely differ between the Taiwanese study population and the U.S. population and which might influence the validity of arsenic cancer risk estimates in the United States. Even though the Agency did its own risk characterization (*i.e.,* they combined the NRC risk factors with U.S. exposure information and arsenic occurrence distributions to obtain a range of risks for use in their benefits analysis), they chose not to quantitatively take any of these factors into account at this time.
>
> The Panel agrees with conclusions reached by the NRC in its 1999 report on arsenic, especially their conclusion that ''there is sufficient evidence from human epidemiological studies * * * that chronic ingestion of inorganic arsenic arsenic [sic] causes bladder and lung, as well as skin cancer.'' The NRC also stated that currently the Taiwanese data are the best available for quantifying risk * * *. We note, however, that this Panel does not believe that resolution of all these factors can nor must be accomplished before EPA promulgates a final arsenic rule in response to the current regulatory deadlines. However, resolution of the critical factors * * *. in time for the next evaluation cycle for the arsenic regulation should be considered as a goal.

In closing the cover letter to the Administrator, the SAB stated:

> Specifically, the majority of the Panel members felt that there is adequate basis for the Agency to consider use of its discretionary authority under the Safe Drinking Water Act of 1996 to consider MCLs other than the proposed 5 µg/L.
>
> * * * The ultimate risk number derived from the Taiwanese study has proven very sensitive to the decision about the appropriateness of the comparison population. This of course, has important implications for the use of the data to estimate risk in the U.S. Also a study in Utah suggests that some U.S. populations may be less susceptible to the development of cancer, than those in Taiwan * * *. Also, a recently published study suggests that the incremental increases in lung and bladder cancers observed in the Taiwan study are of roughly the same magnitude, rather than the NRC's inference of a potentially two- to five-fold greater rate of lung cancer relative to bladder cancer.
>
> As noted by the NRC, the mechanisms associated with arsenic-induced cancer most likely have a sublinear character, which implies that linear models, such as those used by the Agency, overestimate risk * * *. Nonetheless, the Panel agrees with the NRC that available data do not yet meet EPA's new criteria for departing from linear extrapolation of cancer risk.

The NRC Subcommittee on Arsenic in Drinking Water explored a number of model approaches using the Taiwan epidemiology data for bladder cancer. Although there are indications that the dose-response relationship for arsenic may be nonlinear at low doses, a convincing biological argument for selecting a nonlinear model is not yet available. Thus, according to EPA's draft 1996 guidelines and consistent with the 1986 guidelines, EPA determined that a point of departure approach was most appropriate to estimate low-dose risks. EPA agreed with NRC's choice of the Poisson model. In the NODA, based on the Morales et al. study (2000), EPA conducted a re-analysis of the bladder and lung cancer data using a Poisson model with no comparison population to estimate points of departure for each health endpoint. In addition to the re-analysis of bladder and lung cancer risk, EPA did a sensitivity analysis of the effect of exposure to arsenic through water used in preparing food in Taiwan. In response to comments received on the proposed rule and the NODA, EPA has also analyzed the effect of exposure to arsenic through food and considered the effect of village level exposure data. In summary, EPA's final risk calculation is supported by analyses of the effect of various assumptions and uncertainties on the risk estimate and reflects the best available science.

EPA believes that it has done a thorough risk analysis on arsenic. Arsenic health risks have remained a high priority at EPA for over 20 years, and EPA scientists have closely followed all scientific developments. EPA established four independent scientific panels to evaluate arsenic health risks (EPA, 2000q; NRC, 1999; EPA, 1997e; EPA, 1988) and provided a sense of the views of the broader scientific community. EPA participated in conducting one of the major cancer mortality studies available on arsenic (Lewis *et al.*, 1999). In the proposed rule and NODA, EPA used the 1999 NRC report's analysis of the Taiwan data as well as other published scientific papers to characterize the potential health hazards of ingested arsenic. The NRC report represents a thorough examination of the best available, peer reviewed science through the late 1990s. Other studies that were important in EPA's analysis were the Utah study (Lewis *et al.*, 1999) and the Morales *et al.* (2000) study. In selecting the proposed MCL, EPA considered the uncertainties of the quantitative dose-response assessment, particularly the possible nonlinearity of the dose-response. EPA also considered the unquantifiable risks from arsenic such as noncancer effects. In response to commenters, EPA expanded its analysis of the Utah study (U.S. EPA, 2000x) and delved further into the uncertainties in the Taiwan data. The Agency made an adjustment to the lower-bound risk estimates to take into consideration the effect of exposure to arsenic through water used in preparing food in Taiwan. In addition, an adjustment was made to the lower-bound risk estimates to take into consideration the relatively high arsenic concentration in the food consumed in Taiwan as compared to the U.S. EPA also investigated the effect of the ecological exposure data on its risk estimates. When villages with only one arsenic measurement were removed

from the data set (on the theory that the exposure data was too uncertain), or when village means instead of medians were used for the exposure estimates, there was no statistically significant change in the estimated point of departure, using Model 1 of Morales *et al.* (2000). In summary, EPA believes that it has completed a thorough risk analysis on arsenic that used the best available, peer reviewed science.

The NRC subjected their draft report to a very rigorous external peer review using its own procedures that are well established and generally acknowledged as being independent and objective. The SAB also reviewed the NRC report and EPA's risk analysis, which was, in part, based on the NRC report. In addition, the public was provided an opportunity to comment on the EPA risk analysis as a part of the arsenic proposal and NODA.

EPA disagrees that the NRC report was politically motivated. The NRC Subcommittee on Arsenic in Drinking Water was composed of 16 highly respected scientific experts. EPA believes that this panel produced an impartial analysis of the data available on the toxicity of arsenic.

6. Setting the MCLG and the MCL

Some commenters were confused about the difference between MCLGs and MCLs, how EPA sets MCLGs and MCLs based on legal, scientific, and policy principles, and the relationship between the MCLG and costs and benefits. Other commenters were concerned about a perceived ''anti-backsliding'' provision for MCLGs and MCLs in SDWA.

In accordance with SDWA, standards set for contaminants consist of two components, a maximum contaminant level goal (MCLG) and a national primary drinking water regulation (NPDWR) (section 1412(b)(1)(A)), which specifies either ''a maximum contaminant level (MCL) for such contaminant which is generally set as close to the maximum contaminant level goal as is feasible'' (section 1412(b)(4)(B)) or a treatment technique if ''it is not economically or technologically feasible to ascertain the level of the contaminant'' (section 1412(b)(7)(A)).

SDWA defines an MCLG as ''the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety'' (section 1412(b)(4)(A)). MCLGs for all carcinogens are set at zero unless adequate scientific data support a higher MCLG. In accordance with the SDWA, the MCLG is based on the best available peer reviewed science. An MCLG is a goal, not a regulatory limit that the Agency expects to be attained by water systems.

The MCLG must be proposed simultaneously with a national primary drinking water regulation (section 1412(a)(3)), which specifies a maximum contaminant level (MCL) as close to the MCLG as technically feasible. The MCL is the enforceable standard. SDWA allows EPA to make an exception to setting the MCL as close to the MCLG as is feasible where the ''Administrator determines * * * that the benefits of a maximum contaminant level * * * would not justify the costs of complying with the level.'' In this case, EPA may propose and promulgate an MCL ''that maximizes health risk reduction benefits at a cost that is justified by the benefits'' (section 1412(b)(6)). This exception was used to set the MCL for arsenic. EPA found that at the feasible level of 3 μg/L, the benefits of compliance did not justify the costs. The Agency determined that an MCL of 10 μg/L maximizes the health risk reduction benefits at a cost that is justified by the benefits (see preamble discussion of the risk management decision that was made for arsenic in section III.F.)

Some commenters argued that EPA sets the MCL within a risk-range of 10^{-4} to 10^{-6} without proper regard to the statutory requirements discussed above. This is not the case. As noted in the proposal, EPA has historically considered this risk range as protective of public health, and accordingly has sought to ensure that drinking water standards are within this risk range. However, the risk-range represents a policy goal for EPA, and is not a statutory factor in setting an MCL. In the case of arsenic, EPA did the benefit-cost analysis required by the statute. Having found that the benefits of an MCL at the feasible level were not justified by the costs, EPA set the MCL at 10 μg/L. This MCL maximizes health risk reduction benefits at a cost that is justified by the benefits.

EPA is required to review and revise as appropriate, each national primary drinking water regulation, at least every 6 years. Revisions to current regulations ''shall maintain, or provide for greater protection of the health of persons'' (section 1412(b)(9)). When new scientific data become available, the Agency may reevaluate the MCLG and MCL.

C. Occurrence

The principal concerns raised by the commenters and our responses are as follows:

1. Occurrence data

Several commenters expressed concern that EPA estimated occurrence using data from only 25 States and that the national estimate was thus not as robust as it should have been. Many of these commenters suggested that EPA should request data from all States/more systems before issuing the final rule.

It is true that we based our occurrence estimate on data from only 25 States. However, we believe that we have compiled the most comprehensive and accurate occurrence estimate possible with currently available data, and that this estimate adequately supports our various analyses and final decisions.

For our occurrence analysis, we relied on data submitted voluntarily by State drinking water agencies. In doing so, we collected the largest available database on arsenic in drinking water, consisting of almost 77,000 observations from more than 26,600 public water systems in 25 States. We received but did not use data from six States (Florida, Idaho, Iowa, Louisiana, Pennsylvania, and South Dakota), because the data either could not be linked to PWSs; did not indicate if results were censored; were all zero; did not provide analytical or reporting limits; or were rounded to the nearest 10 μg/L.

In response to our request in the proposed rule for additional occurrence data, we received additional data from several States. However, in each case, the submitted data either corresponded closely to observations already in our data set (California, New Mexico, Utah), or were of the wrong kind or insufficient quantity to use in our estimation (Iowa, Maryland, Nebraska, Oklahoma, Vermont, West Virginia).

Of the States from whom we did not receive usable data, we believe that many do not have databases of the kind and quality that we would need for our occurrence analysis. We therefore could not have obtained such information from other States without requiring, in some instances, new monitoring to be undertaken and new data to be compiled.

In forming our occurrence estimate, we did not ignore States for which we have no suitable data. We accounted for these States by assigning regional occurrence distributions to them. Our resulting national estimates compare relatively closely with those developed by the utility industry and by the U.S. Geological Survey (EPA, 2000r).

Some commenters indicated EPA should not use data from the U.S. Geological Survey's National Ambient Water Quality Assessment (NAWQA) or EPA's NIRS, SDWIS, or Rural Water

Survey (RWS) to estimate occurrence. In forming our occurrence estimates, we used arsenic concentrations drawn only from our 25-State arsenic compliance monitoring database. We did not use observations from NAWQA, SDWIS, RWS, NAOS, NIRS, NOMS, Community Water System Survey (CWSS) or any other surveys or studies. As the preamble of the proposed rule (65 FR 38888 at 38903) states, we used National Organic Monitoring Survey (NOMS), RWS, and the 1978 CWSS in previous arsenic occurrence analyses, but did not use them for the present analysis because of their age and relatively high detection limits. The only information we used from SDWIS was the type and size of particular systems, and the numbers of systems and population served in different categories of systems. We used NAWQA, NAOS and NIRS only for comparison to our finished results.

2. Occurrence Methodology

Some commenters stated their belief that EPA had underestimated national occurrence because they believe that EPA did not have enough data with which to develop the estimate. Commenters also believed that, since the national occurrence is underestimated, noncompliance/co-occurrence are also underestimated.

We do not agree that we have underestimated arsenic occurrence. We have the largest existing database of arsenic in drinking water, with almost 77,000 observations from more than 26,600 public water systems in 25 States. We did not ignore States for which we have no data, but accounted for them by assigning regional occurrence distributions to them. Our data and methodology have been approved by an independent expert peer review panel. Our occurrence estimates are close to those of the NAOS and USGS.

Some commenters believe EPA's occurrence methodology is inconsistent with the way compliance is determined and that EPA should use a running annual average for estimating noncompliance.

We acknowledged in the proposed rule (65 FR 38888 at 38907) that our method of estimating occurrence is different from the method used for determining compliance with the MCL. Our method usually gives higher estimates, because we substitute non-zero values for non-detects, while under the regulatory definition of compliance, non-detects are assumed to equal zero. We believe our method is the best one despite the difference, for two reasons. First, our goal is to characterize arsenic occurrence as accurately as possible. Given a sound characterization of system-mean occurrence and of intra-system and intra-source variability, the numbers of systems and points of entry expected to fail the regulatory definition of compliance at some MCL option can be determined. The reverse calculation, on the other hand, is generally not possible. Second, as analytical methods improve and detection limits decrease, the difference between the two methods will decrease.

To the extent that our estimates disagree with those used for determining compliance, our estimates will be higher and thus will cause us to slightly overestimate the costs associated with any MCL option. Our estimates of benefits, on the other hand, should not be biased one way or the other by our occurrence estimate, since health risks are mainly determined by mean exposure over time, which we accurately characterize. The same would not be true if we used the regulatory definition of non-detects, which underestimates mean occurrence.

Commenters also pointed out that occurrence estimates in different parts of the rule and support documents are inconsistent. Although the analysis is internally consistent, apparent inconsistencies in the numbers arise from three sources: System versus site considerations, year of the SDWIS inventory, and use of best point or regressed estimates. With respect to the first point, because most large ground water systems have multiple entry points, some systems which have average concentrations below the MCL will still have impacted entry points. As a consequence, the number of impacted systems is much larger than the number of systems with mean concentrations above the MCL. In the proposal, this difference amounted to several hundred systems.

In connection with the second point, year of the SDWIS inventory, it is not unusual for there to be a change from year to year in the inventory of hundreds of water systems. This results from restructuring and consolidations, among other factors. In the final rule and supporting documents, we have tried to address this issue by consistently using a single set of baseline estimates, taken from EPA's Drinking Water Baseline Handbook (EPA, 2000b). Regardless, this factor is only responsible for a one or two percent variation in the impact estimate, and is not of sufficient significance to impact the decision making process.

The third issue relates to the representation of the mean system arsenic occurrence. In many tables, mean arsenic concentrations are presented which reflect our best point estimates. Nevertheless, the best estimate of national cost impacts derives from use of a best fit equation which incorporates all of the data. We have used these regressed fits in the development of the costs and benefits. The two sets of estimates are described in section III.C.4.

3. Co-Occurrence

Some commenters believe EPA has underestimated the co-occurrence of arsenic with radon.We agree that, based on the NWIS data, most systems with arsenic greater than 10 μg/L will also have radon greater than 300 pCi/L. However, only about 8% of all systems exceed both standards. Moreover, about 85% of such systems (again based on NWIS) have radon in the range of 300 to 1000 pCi/L, where incidental removal of radon will be most effective. We expect, for example, that systems with 300 to 1000 pCi/L of radon will be more likely to treat for arsenic by coagulation and microfiltration, which removes most radon incidentally by aeration. Therefore, we believe that the impact of co-occurrence of radon and arsenic will be small.

Some commenters believed that EPA did not evaluate the effect of different sulfate levels in its decision tree. We did evaluate several ranges of concentrations of sulfate and arsenic against each other (see 65 FR 38888 at 38938). The sulfate concentration ranges included 0 to 25, 25 to 120, 120 to 250, 250 to 500, and >500 mg/L. The arsenic concentration ranges included 0 to 2, 2 to 5, 5 to 10, 10 to 20, and >20 μg/L. For these ranges, there was no apparent change in co-occurrence of sulfate and arsenic as the concentrations increased. However, the Agency took the co-occurrence of arsenic and sulfate and the impact on anion exchange technology into consideration in the decision tree at sulfate levels of <20, 20 to 90, 90 to 120, and >120 mg/L. The revised decision tree for today's final rule only applies anion exchange when sulfate levels are less than 50 mg/L.

Some commenters expressed their belief that NWIS is inadequate to estimate national co-occurrence of arsenic and radon and that NWIS data should be verified as representative of PWS water use by requesting data from States. It is true that NWIS includes samples from non-drinking water supplies. NWIS is, however, the largest and best data base available for studying co-occurrence with over 40,000 ambient water samples. To the extent that non-drinking water samples affect our estimates, they should cause us to

overestimate occurrence and therefore also co-occurrence. We realize that NWIS may not reflect conditions in any given State or water system; we use it only for deriving national estimates.

D. Analytical Methods

1. Analytical Interferences

Commenters expressed concern about the potential for matrix interferences in the analysis of arsenic at low levels. A potential for chloride interference when using ICP–MS with samples containing high levels of chloride was specifically noted by commenters. A commenter also stated that some investigators had reported arsenic results in drinking water samples that differed depending on the valence state of the arsenic in the sample (*i.e.*, As (III) or (V)) when using methods that used GHAA technology. The Agency agrees that interferences may be encountered when determining arsenic using the methods proposed in the June 2000 rule (including the GHAA technique). However, the Agency disagrees that the interferences are unexpected or impede compliance with the arsenic MCL of 0.01 mg/L. Four different measurement technologies are approved for the analysis of arsenic: AA furnace, AA-Platform, GHAA and ICP–MS with respective MDLs of 0.001 mg/L, 0.0005 mg/L, 0.001 mg/L, and 0.0014 mg/L. These technologies have been used for compliance determinations of arsenic for many years. The methods written around each of these technologies identify potential interferences and contain corrective procedures. In particular, the ICP–MS method warns of potential interferences from chloride and provides instructions to eliminate this problem.

2. Demonstration of PQL (Includes Acceptance Limits)

Several commenters agreed with the ±30% acceptance limit and the 0.003 mg/L PQL derived and proposed for arsenic. Other commenters expressed concerns that the PQL was not correctly derived or that the acceptance limits were too broad.

A commenter stated that the Agency should set the PQL at 5 to 10 times the method detection limits of 0.001mg/L which would result in a PQL range of 0.005 to 0.010 mg/L. As previously explained in section III.B.1 of this preamble, EPA only uses the MDL multiplier approach to derive a PQL when there is insufficient interlaboratory data to statistically derive a PQL. For arsenic, the Agency had ample WS data to derive a PQL using the interlaboratory approach.

Several commenters were concerned that the ''PQL study is not realistic and does not account for matrix interference in real drinking water samples.'' In addition, some commenters stated that the ''PQL should be set at a level that is achievable by laboratories on a routine basis.'' EPA disagrees that the PQL for arsenic is unrealistic, or that it has been set at a level that is unachievable on a routine basis. As explained in section III.B.1 of this preamble, EPA used the interlaboratory data from six recent WS studies to derive the arsenic PQL. The WS studies utilize reagent grade water (*i.e.*, blank water free of interferences) for the PE-samples that are analyzed in the WS study. Use of reagent water to prepare a test sample conforms with an accepted and longstanding practice in which a method developer validates an analytical method in blank water before looking for possible inaccuracies from matrix effects when the method is applied to a sample matrix (*e.g.*, a compliance drinking water sample). Reagent water is used as an initial benchmark for method development and testing, because it is interference-free and can be readily produced in any competent laboratory. A lab subsequently identifies and corrects for matrix effects by comparing its performance on reagent water to the results on the matrix (contaminated drinking water) or spiked matrix (clean drinking water spiked with arsenic) sample.

All of the methods approved for SDWA and Clean Water Act (CWA) compliance monitoring require that laboratories demonstrate acceptable performance in reagent grade water before drinking water samples are tested. A study conducted by Eaton (Eaton, 1994) found that the type of matrix and the analytical method used had no significant effect on the derivation of their PQL. This study included drinking waters with high total dissolved solids and total organic carbon, and arsenic concentrations that ranged from 0.001 to 0.010 mg/L. Thus, EPA disagrees with the comment that the PQL would be significantly different if derived in various drinking waters instead of in reagent water.

The Agency also believes that the derived PQL of 0.003 mg/L is realistic and is achievable on a routine basis. The derivation of the PQL for arsenic is consistent with the longstanding process used to determine PQLs for other metal contaminants regulated under SDWA. In deriving the PQL for arsenic, the Agency took into consideration the issue of laboratory capability, laboratory capacity, and the ability of laboratories to achieve a quantitation level on a routine basis. The PQL for arsenic was derived from data collected in WS studies in which PE-samples were prepared with reagent water spiked with low concentrations, <0.006 mg/L, of arsenic. These studies were conducted from 1992 to 1995. The number of EPA Regional and State laboratories that participated in each study ranged from 26 to 45 laboratories. Using acceptance limits of ±30% a linear regression analysis of this data yielded a PQL of 0.00258 mg/L. The Agency rounded up to derive the proposed PQL of 0.003 mg/L (3 µg/L) with a ±30% acceptance limit. Over 75% of the EPA Regional and State laboratories were able to report arsenic concentrations within ±30% of 3 µg/L. In addition, 62% of non-EPA laboratories that participated in these same WS studies were equally successful. The number of non-EPA laboratories in these WS studies ranged from 360 to 619 laboratories, which means that the number of laboratories that successfully analyzed the low concentration arsenic PE-samples ranged from 223 to 384. This data indicate that neither laboratory capacity nor capability will be a problem at a PQL of 3 µg/L ±30%. EPA, therefore, believes that competent laboratories are available, and with the use of the quality control instructions in the compliance methods will routinely achieve this level of performance.

Several commenters felt the acceptance limit of ±30% is too wide. The ±30% acceptance limit was based on a recommendation from the SAB. The SAB recommendation was to choose an acceptance limit similar to that set for other regulated metals (EPA, 1995). These limits range from ±15% for barium, beryllium, and chromium to ±30% for mercury and thallium (§ 141.23(k)(3)). EPA chose the upper (*i.e.*, wider) limit on this range to ensure that a sufficient number of laboratories could be certified for arsenic determinations (the number of laboratories that can achieve the accuracy acceptance limit increases as the limit is widened). Several commenters agreed with the proposed ±30% acceptance limit, because they shared EPA concerns about insufficient laboratory capacity if this limit was narrowed.

3. Acidification of samples

A commenter stated that the Agency needed to clarify that a sample can be collected in the field without acidification, and that acidification of the sample can be done later at the laboratory. The commenter believes that delaying acidification does not affect the compliance determination and that a

laboratory is a better place in which to handle acids. The Agency agrees with this comment and had previously clarified in a final rule (64 FR 67450; December 1, 1999; see page 67452, item 11 and page 67456, item 3; EPA, 1999p), that acidification of samples may be conducted in the field or laboratory with acidification at the laboratory being the better and safer choice. In the 1999 rule, EPA noted that this change would be affected by amending footnote one to the table at § 141.23(k)(2) to read as follows:

> For cyanide determinations samples must be adjusted with sodium hydroxide to pH > 12 at the time off collection. When chilling is indicated the sample must be shipped and stored at 4EC or less. Acidification of nitrate or metals samples may be with a concentrated acid or a dilute (50% by volume) solution of the applicable concentrated acid. Acidification of samples for metals analysis is encouraged and allowed at the laboratory rather than at the time of sampling provided the shipping time and other instructions in Section 8.3 of EPA Methods 200.7 or 200.8 or 200.9 are followed.

Although the June 2000 proposal inadvertently omitted this footnote, today's final rule contains the correct footnote.

Another commenter believed that because the proposed sample preservation requirement for arsenic was new and supposedly untested, data collected under the previous requirements might not be comparable to data resulting from the new sample preservation requirement. These are not new analytical requirements. The commenter may have been misled by the statement in the preamble to the June 2000 arsenic proposal that EPA proposed to add a ''new'' requirement to the preservation and holding time table at § 141.23(k)(2). It is only new in the sense that EPA has codified the requirements in today's rule. Arsenic compliance data collected in the past and the arsenic data discussed in the June 2000 proposal were collected using these preservation and holding time conditions.

E. Monitoring and Reporting Requirements

1. Compliance Determinations

Most of the comments regarding compliance determinations requested the Agency to provide further clarification on this issue. Many commenters specifically asked EPA to specify whether samples collected quarterly as a result of an MCL violation are defined as compliance samples or confirmation samples. In today's final rule, the Agency has provided further clarification in the regulatory language to eliminate any misinterpretation.

The Agency defines quarterly samples as compliance samples that must be used to determine compliance. Confirmation samples are any samples that the State requires that go beyond the minimum Federally required samples defined in the following paragraph.

Systems will determine compliance based on the compliance samples obtained at each sampling point. If any sampling point is in violation of an MCL, the system has a MCL violation. For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. Systems monitoring annually or less frequently whose sample result exceeds the MCL for inorganic contaminants in § 141.23(c), or whose sample result exceeds the trigger level for organic contaminants listed in §§ 141.24(f) or 141.24(h) must revert to quarterly sampling in the next quarter. The system will not be considered in violation of the MCL until it has completed one year of quarterly compliance sampling. If any sample result will cause the running annual average to exceed the MCL at any sample point (*i.e.*, the analytical result is greater than four times the MCL), the system is out of compliance with the MCL immediately. Systems may not monitor more frequently than specified by the State to determine compliance unless it has applied to and obtained approval from the State. If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running annual average of the samples collected. If a sample result is less than the detection limit, zero will be used to calculate the annual average. States have the discretion to delete results of obvious sampling or analytic errors.

States still have the flexibility to require confirmation samples for positive or negative results. States may require more than one confirmation sample to determine the average exposure over a 3-month period. Confirmation samples must be averaged with the original analytical result to calculate an average over the 3-month period. The 3-month average must be used as one of the quarterly concentrations for determining the running annual average. The running annual average must be used for compliance determinations.

Some commenters requested rule language that clearly specifies how to determine compliance and others requested approval of scientific methodologies that more accurately reflect the average annual contaminant exposure. Today's rule requires that monitoring be conducted at all entry points to the distribution system. However, the State has discretion to require monitoring and determine compliance based on a case-by-case analysis of individual drinking water systems.

The Agency cannot in this rule address all of the possible outcomes that may occur at a particular water system; therefore, EPA encourages drinking water systems to inform State regulators of their individual circumstances. Some systems have implemented elaborate plans including targeted, increased monitoring that is much more representative of the average annual mean contaminant concentration to which individuals are being exposed. (Some States determine compliance based on a time or flow weighted average.) In many cases, the State can demonstrate that compliance is being calculated based on scientific methods that are more representative of the true contaminant concentration that individuals are being exposed to over a year, but it substantially increases the sampling and analytical costs.

Some States require that systems collect samples from wells that only operate for 1 month out of the year regardless of whether they are operating during scheduled sampling times. The State may determine compliance based on several factors including, but not limited to, the quantity of water supplied by a source, the duration of service of the source, and contaminant concentration.

2. Monitoring of POU Devices

Several commenters indicated that there will be many implementation problems with POU devices. EPA agrees that some issues such as scheduling and access for routine maintenance of POU devices, liability, and monitoring may be difficult but believes they can be alleviated with sufficient planning. The Agency will be providing POU operation and maintenance guidance for small systems after publication of the final rule. In general, EPA believes that POU systems can be easily installed, maintained, and monitored for removal efficacy.

EPA believes that it is feasible for public water systems to own, control, and maintain POE/POU devices for arsenic MCL compliance either directly or through a contract with a qualified party. This approach, however, requires more recordkeeping to monitor individual devices than does centralized

treatment. Both POU AA and RO can be obtained with mechanical warnings to ensure that customers are notified of operational problems. In the case of activated alumina, such warnings include shut-off valves that are triggered prior to the adsorptive capacity of the media being exhausted, based on the volume of water treated. Reverse osmosis POU devices come with total dissolved solids detectors that activate warning lights when membrane integrity is compromised.

Systems having high arsenic concentrations in the finished water that choose to achieve compliance using POU treatment would shift from monitoring at a central location to monitoring at the POU devices. As is the case with any system that installs treatment to lower contaminant concentrations to levels below the MCL, the monitoring frequency is part of the compliance agreement between the Primacy Agency and the system. The compliance agreement must require monitoring that is as protective as monitoring for systems using centralized treatment and may not be less frequent than the routine monitoring required in today's rule (i.e., annual samples for surface water systems and one sample every three years for ground water systems). The Primacy Agency will be responsible for negotiating the monitoring schedule with the system for POU devices and may amend the compliance agreement with the system to increase or reduce the monitoring frequency to an alternate schedule depending upon maintenance, public responses, the implementation of the service agreement, and the initial monitoring results. For purposes of forecasting national compliance costs, EPA assumed that all POU devices would be monitored for arsenic with one sample taken the first year following installation, samples taken annually in subsequent years, and replacement of the filter cartridge at each POU site every 6 months.

3. Monitoring and Reporting for NTNCWSs

Most commenters disagreed with EPA's approach of requiring NTNCWSs to monitor and provide public notification. Instead, the majority of commenters indicated that EPA should either require full coverage or not regulate NTNCWSs. In today's rule making, EPA is requiring NTNCWSs to comply with the arsenic regulation, including the monitoring and reporting requirements associated with arsenic in § 141.23, the MCL listed in § 141.62, and the public notification requirements (NTNCWSs are subject to the same requirements as those of CWSs). EPA acknowledges that there is uncertainty associated with its information about exposure patterns for consumers of water from NTNCWSs and the demographics of these facilities. Thus, our understanding of the health risks to consumers of water from NTNCWSs is uncertain. In the case of arsenic, however, EPA believes the additional uncertainty in the overall risk analysis supports the decision to treat these facilities the same as CWSs. EPA also believes the decision to cover these facilities is underscored by consideration of the risks to children who consume water at day care facilities or schools that are served by NTNCWSs.

4. CCR Health Language and Reporting Date

Comments received on EPA's proposed consumer confidence reporting (CCR) requirements were equally split. Some commenters supported EPA's proposal to include health effects language in CCRs if a system detects arsenic above the revised MCL prior to the effective date. Others disagreed with the proposal because they believed providing this information prior to the effective date would be confusing to consumers and would not allow sufficient time to inform consumers about the risks associated with arsenic. These dissenting commenters generally felt that it would be more useful for systems to provide notice to consumers that the MCL has been revised and systems will be required to comply by the effective date of the revision.

The Agency believes that it is important to provide customers with the most current understanding of the risk presented by arsenic as soon as possible after establishing the new standard. In today's rule, community water systems that detect arsenic between the revised and existing MCL must include health effects language in their consumer confidence reports prior to the effective date of the revised MCL. The Agency does not believe that inclusion of this information will be unnecessarily confusing to consumers because, under the CCR rule systems have the flexibility to place this information in context. EPA expects that affected systems will include not only the health effects language but also an explanation that the current MCL has been revised and the system is not in violation because the new standard has not yet taken effect.

EPA is finalizing an MCL somewhat higher than the technologically feasible MCL. Since some commenters expressed concern about the risk that a higher-than-feasible MCL might present to certain consumers, EPA is requiring systems that detect arsenic at concentrations greater than 5 μg/L and up to and including 10 μg/L to provide additional information to their customers. EPA believes that consumers should be aware of the uncertainties surrounding the risks presented by very low levels of arsenic. While EPA addressed many of the sources of uncertainty in its risk analysis of arsenic in support of the final rule, several sources of uncertainty remain and will be considered in the future in the context of the periodic review and revision, if appropriate, of drinking water regulations as required by section 1412(b)(9) of SDWA.

5. Implementation Guidance

EPA appreciates the fact that the final rule will place a new implementation burden on many water systems, particularly small systems. This is particularly true of small ground water systems that heretofore have not been obliged to install, operate, and maintain a treatment facility. EPA also understands that new or more sophisticated treatment technologies will have obvious implications in terms of operator capacity. EPA has addressed this issue in several ways, and does not believe that it is an impediment to promulgating this new MCL. In brief, some of the ways these implementation concerns have been addressed are as follows. EPA has identified a number of affordable small system treatment technologies that are based on consideration of the capabilities of small system operators. Systems will have the latitude to choose the type of treatment technology that is most cost effective and appropriate (from an operation and maintenance standpoint) for their particular situation. EPA also plans to publish implementation guidance for small systems within 60 days of publication of the final rule that will provide helpful information to aid small systems in both selecting and operating small treatment technologies. EPA has exercised its statutory authority under section 1412(b)(10) of SDWA to provide an additional 2 years for small systems to comply with this rule (for a total of 5 years). Individual small systems may apply for exemptions with extensions that can provide for a total of an additional 9 years to comply with the requirements of this rule. Finally, EPA notes that the final rule provides more ''buffer'' between the feasible level (3 μg/L) and the MCL of 10 μg/L as compared to the proposed level of 5 μg/L. Thus, treatment facilities that experience operation difficulties would

have more latitude in terms of the timing and type of corrective measures that would need to be taken than would be the case with a more stringent final MCL. For all of the above reasons, EPA does not believe that there are any insurmountable implementation problems associated with the final MCL for arsenic.

6. Rounding Analytical Results

Today's rule requires that data be reported to the nearest 0.001 mg/L (3 significant figures). Some commenters felt that the rounding approach described in the proposed rule would significantly impact State programs. The proposed rule solicited comment on an approach requiring all values greater than or equal to 6 to be rounded up and all values less than or equal to 4 to be rounded down (*i.e.* a value of 0.0056 mg/L would be rounded to 0.006 mg/L). Results ending in 5 would round the third significant digit to the closest ''even'' number. Therefore, a result of 0.0155 mg/L would be rounded to 0.016 mg/L, and 0.0145 mg/L would be rounded to 0.014 mg/L. Some commenters supported EPA's rounding approach. Other commenters indicated that implementing this revision would affect State data management operations and would require staff training.

The Agency recognizes that implementing a revision to the existing rounding guidance may impact State database and computer programs. In today's final rule, the Agency is encouraging States to continue using the rounding scheme that EPA recommended in the ''Water Supply Guidance #72'', dated April 6, 1981. EPA stated in this guidance that:

> All MCLs contained in the National Interim Primary Drinking Water Regulations are expressed in the number of significant digits permitted by the precision and accuracy of the specified analytical procedures. Data reported to the State or EPA should be in a form containing the same number of significant digits as the MCL. In calculating data for compliance purposes, it is necessary to round-off by dropping the digits that are not significant. The last significant digit should be increased by one unit if the digit dropped is 5, 6, 7, 8, or 9. If the digit is 0, 1, 2, 3, or 4 do not alter the preceding number.

For example, analytical results for arsenic of 0.0105 mg/L would round off to 0.011 mg/L while a result of 0.0104 mg/L would round off to 0.010 mg/L.

F. Treatment Technologies

1. Demonstration of Technology Performance

Many comments on the proposed arsenic rule (EPA, 2000i) expressed the concern that the treatment options that EPA designated as BAT for compliance with the arsenic MCL have not been adequately demonstrated in full-scale operation for arsenic removal. Commenters noted that there are relatively few arsenic treatment facilities in the U.S., and these facilities are generally small and were designed for an arsenic MCL of 50 µg/L. Although many of the treatment options designated as BAT are widely used for other water treatment objectives, commenters stated that the limited application of these technologies to arsenic removal, especially in large plants, creates uncertainty as to their efficacy and feasibility for this purpose. Commenters alleged that this situation makes it difficult for water systems to determine appropriate compliance technology choices and raises questions regarding the validity of EPA's estimates of costs for compliance with the arsenic MCL.

EPA notes that SDWA section 1412(b)(4)(E) states: [E]ach national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment technique, and other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level.

SDWA defines feasible in section 1412(b)(4)(D) as follows:

> For the purposes of this subsection, the term ''feasible'' means feasible with the use of the best technology, treatment techniques, and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).

Thus, SDWA requires EPA to list feasible compliance treatment options based on demonstration of efficacy under field conditions and taking cost into consideration.

For compliance with the arsenic MCL, EPA judged technologies to be a best available technology when the following criteria were satisfactorily met:

- The capability of a high removal efficiency;
- A history of full scale operation;
- General geographic applicability;
- Reasonable cost;
- Reasonable service life;
- Compatible with other water treatment processes; and
- The ability to bring all of the water in a system into compliance.

After reviewing a number of technologies, EPA identified the following as BAT for arsenic removal: ion exchange, activated alumina, reverse osmosis, modified coagulation/filtration, modified lime softening, electrodialysis reversal, and oxidation/filtration. EPA believes that all of these treatment options meet the SDWA criteria of demonstrated efficacy under field conditions and, further, meet the additional criteria listed above which EPA has historically used to identify BAT. Studies which support this assessment are described in ''Technologies and Costs for Removal of Arsenic from Drinking Water'' (EPA, 2000t). Consequently, identification of these technologies as BAT is appropriate.

EPA recognizes that application of the arsenic BAT treatment options to full-scale plants where they are optimized specifically for arsenic removal is limited. This is especially true in regard to large plants. Nevertheless, as stated previously, it is appropriate for EPA to identify these technologies as BAT because they have been demonstrated to be effective for arsenic removal under field conditions. Moreover, all of the technologies listed as BAT have an established history of successful application at full scale in water treatment plants for related treatment objectives, specifically including the removal of inorganic contaminants (EPA, 2000t). Ion exchange is applied in both municipal and POE/POU treatment for softening (i.e., removal of calcium and magnesium), as well as for removal of nitrate, arsenic, chromium, radium, uranium, and selenium. Activated alumina is used in water treatment plants to remove contaminants such as fluoride, arsenic, selenium, silica, and natural organic matter. Reverse osmosis has traditionally been employed to desalinate brackish water and sea water. Electrodialysis reversal systems are often used in treating brackish water to make it suitable for drinking, and have also been applied for wastewater recovery. Oxidation followed by filtration is utilized extensively in public water systems for removal of iron and manganese. Lime softening is widely applied for reducing calcium, magnesium, and other metals in large water treatment systems. Most surface water systems use coagulation/filtration processes for particulate removal, and a growing number of systems have modified these processes to increase removal of dissolved constituents, primarily TOC and certain metals.

EPA believes that the successful application of the arsenic BAT treatment options for the removal of contaminants other than arsenic is relevant to their ability to remove arsenic in full-scale plants. The physical and chemical mechanisms operative in these technologies for the removal of hardness, sodium, fluoride, TOC and other dissolved species are analogous to

the mechanisms by which these technologies remove arsenic. In addition, none of these technologies have characteristics that would make them ineffective or infeasible at large scale or under long-term operation. The specific conditions under which optimized performance is achieved may differ somewhat between removal of arsenic and removal of other contaminants, just as they may differ from plant to plant based on water matrix and other treatment processes in use. However, because it has been shown that these technologies can remove arsenic under field conditions, and because these technologies have an established history of use for the removal of inorganic contaminants in full-scale systems, EPA believes it is appropriate and technically justified to conclude that they can be successfully used for arsenic removal in full-scale plants.

2. Barriers to Technology Application

EPA received many comments on the proposed arsenic rule (EPA, 2000i) that described challenges that systems would face in applying the technologies identified by EPA for compliance with the arsenic MCL. Among such challenges asserted by comments were the following: the cost and availability of adequately trained, certified operators, especially in small systems; hazards associated with the shipping, handling, and storage of chemicals, especially in regard to wells located in residential areas; and the infeasibility of water loss from treatment processes in arid regions. Note that comments dealing with residuals handling and disposal are addressed subsequently in section V.F.4 of this preamble.

In regard to water treatment plant operators, EPA believes that operator competency is critical for the protection of public health and the maintenance of safe, optimal, and reliable performance of water treatment and distribution facilities. Pursuant to SDWA section 1419(a), EPA has developed guidelines for the certification and recertification of the operators of community and nontransient noncommunity public water systems. These guidelines require that all operating personnel who make process control/system integrity decisions about water quality or quantity that affect public health must be properly certified by the State. EPA recognizes and has considered that the treatment technologies, which systems will install to comply with the arsenic MCL, may add complexity to existing treatment works or may be applied to previously untreated ground water. These situations will necessitate additional operator training to ensure that treatment processes are properly operated, and systems will incur additional costs associated with operator labor.

EPA believes there will be sufficient numbers of adequately trained and certified operators available to public water systems. Operator training programs are available throughout the U.S. through home study courses, classroom settings, and in-plant training. Current and new water treatment operators can obtain the training necessary to operate any of the treatment technologies considered for compliance with the arsenic MCL. EPA is developing a grants program pursuant to SDWA section 1419(d) to reimburse training and certification costs for operators employed by community water systems and nontransient, noncommunity water systems serving 3,300 or fewer people. This funding will reduce the compliance burden on these small systems, thereby increasing the likelihood that the systems will be able to reliably operate and maintain new treatment. Today's rule offers five years between promulgation and the time systems must be in compliance. An exemption can provide three additional years to achieve compliance, and this exemption may be renewed for up to six years for small systems. The Agency believes this amount of time will offer ample opportunity for States' operator training and certification programs to prepare operators.

EPA's Operator Certification Guidelines require that a certified operator be responsible, in charge, and available to all community and nontransient, noncommunity water systems. However, this does not mean a certified operator must be on site at every treatment facility 24 hours a day, 7 days a week. The treatment technologies do not necessarily require constant supervision of operators. Depending upon State requirements, regional certified operators could travel from facility to facility on a regular basis to oversee the efforts of the non-certified operators provided the certified operator was also available to the system on an on-call basis. Systems must consider their operational constraints in selecting treatment technologies and in establishing appropriate operational controls.

EPA has accounted for additional labor costs associated with the operation of treatment technologies for compliance with the arsenic MCL. The Agency's analyses of additional costs are described in ''Technologies and Costs for Removal of Arsenic from Drinking Water'' (EPA, 2000t). The labor rates used to develop operation and maintenance costs are conservative estimates based on loaded rates for certified operators in large and small systems.

Concerns expressed by commenters on the storage, handling, and application of chemicals used in arsenic treatment centered on hazards to the public health and safety if an accidental release occurred. These comments hinged on the fact that ground water systems may have wells located in residential and high population-density areas. Several commenters asserted that the risks from chemical application in these areas may outweigh the hazards associated with potentially elevated arsenic concentrations. Among the chemicals of concern are chlorine for pre-oxidation, and acids and bases for pH adjustment.

While EPA understands the nature of this concern, EPA does not believe that chemical usage for compliance with the arsenic MCL poses a significant risk. Systems using chemicals should employ established safety and emergency response procedures, along with effective operator training and certification. Measures that can be taken to alleviate potential problems with chemical handling and storage include: review chemical documentation to check quantity and quality; visually inspect chemicals and conduct appropriate verification tests; label and secure unloading points; verify adequate receiving tank capacity; inspect chemical containers for any damage or evidence of leaks; specify delivery at scheduled times; specify equipment necessary for safe handling and transfer of chemicals; and supervise unloading with trained personnel (Casale and LeChevallier, 2000).

Many community water systems currently disinfect with chlorine. This includes many small systems and ground water systems with wells in residential areas. Small systems and ground water systems typically apply chlorine as hypochlorite that carries relatively little risk. Liquified chlorine gas is generally cheaper and is used by many large systems. The use of chlorine gas involves certain risks associated with accidental leakage. However, these risks are well understood and are managed through high standards of equipment specification, operation and management procedures, and training of personnel (Porter *et al.,* 2000).

Systems using activated alumina may lower the pH of the feedwater in order to increase process efficiency, and subsequently raise the pH to stabilize the water. EPA believes that most large systems have a sufficient level of

technical expertise to modify pH without difficulty. However, EPA recognizes that very small systems may lack the operator capacity to successfully rely on pH modification as a component of a treatment process. In estimating costs for compliance with the arsenic MCL, EPA assumed that most very small systems using activated alumina would not adjust the raw water pH. These plants would run under less-than-optimal conditions but would still meet the arsenic MCL. Furthermore, for small systems and for other systems that may lack the technical expertise to adjust pH, other treatment options are available. Because of the number and flexibility of treatment options available to systems, along with the training and certification of operators, EPA believes that hazards to the public as a result of arsenic treatment will be minimal.

In regard to concerns with water scarcity, EPA notes that of the technologies listed in the proposed rule as BAT, only reverse osmosis (RO) and electrodialysis reversal (EDR) produce reject water in a quantity likely to make them undesirable in arid regions. While EDR and RO were listed as BAT in the proposed rule, they were not used in the final national cost estimate because other options are more cost effective and do not reject a large volume of water like these two technologies. Thus, we did not assume that any systems would chose EDR and assumed that RO would only be used by a small fraction of small systems and only in POU devices. POU devices treat only a small fraction of the household water, so that any water loss is minimized. Consequently, EPA does not believe that commenters' concerns about water scarcity alter EPA's projections of systems' ability to comply with the arsenic MCL. Moreover, in today's rule EPA has established the MCL for arsenic at 10 ppb. At this level, it would be possible for many systems to use RO or EDR in a split-stream mode, treating a portion of the water, and blending treated and untreated water to achieve compliance. This option would enable systems to significantly reduce the amount of reject water produced were they to select these technologies.

In cases where the available water resources are limited, systems may select technologies like activated alumina, anion exchange, and coagulation assisted microfiltration where water loss is limited to a few percent or less. As discussed in ''Technologies and Costs for Removal of Arsenic from Drinking Water'' (EPA, 2000t), the principal water losses associated with anion exchange and activated alumina result from the rinsing of the beds after regeneration and, in some limited cases, backwashing for removal of solids. In normal operating conditions, EPA expects this waste water to amount to a small percentage of the total water produced.

3. Small System Technology Application

A number of commenters raised concerns over the small system compliance technologies described in the proposal. Many of these comments questioned the ability of small systems to apply these technologies. EPA has carefully considered these comments and responses to the significant issues are provided below (see section I.G. for a discussion of the affordable small system compliance technologies under today's final rule).

The most significant issues raised by comments addressed the application of Point-of-Use/Point-of-Entry (POU/POE) treatment in small systems. Comments cited requirements for preoxidation for activated alumina (AA) units as reasons why the POU/POE devices would not be desirable. EPA notes that many small systems have disinfection treatment systems in place that could act as preoxidation for POE/POU units. Comments also raised concerns regarding the brine or concentrate stream generated by reverse osmosis (RO) POU/POE units. Commenters questioned whether the systems would waste precious water in arid areas. EPA believes systems in arid areas are more likely to select activated alumina (AA) or another centralized treatment technology. Commenters also raised concern over the disposal of the concentrate from these units into sewer or septic systems. In response, EPA believes it would be highly unlikely for the concentrate stream to pose problems because only about 1% of the household water is treated, thereby minimally influencing the quality of the sewage discharged from the household. Finally, commenters questioned the ability of small systems to maintain POE/POU devices which are installed in private homes. EPA believes it is feasible for public water systems to own, control, and maintain POE/POU devices for arsenic MCL compliance either directly or through a contract with a qualified party. While EPA recognizes that access to homes for maintenance may be an issue for some systems, we believe that such access would be permitted in others, especially if significant cost savings could be achieved.

4. Waste Generation and Disposal

Many comments stated that EPA did not adequately consider problems with waste generation and disposal when evaluating which technologies would be most appropriately used for achieving compliance. Commenters expressed particular concern with anion exchange, activated alumina, and reverse osmosis because wastes generated from these processes, depending upon their operating and site specific conditions, could be hazardous or difficult to dispose of. Comments indicated that many utilities would have difficulty in achieving compliance with the proposed rule while also maintaining compliance with other environmental laws and regulations (e.g., RCRA and CWA). Commenters questioned EPA's analysis for the proposed rule that indicated that no RCRA hazardous wastes would need to be disposed in the decision tree.

Arsenic treatment technologies produce three different types of wastes: Brines, sludges and spent media. Depending upon arsenic concentration and the characteristics of the waste, each of these wastes can pose disposal challenges and has the potential for being classified as hazardous.

Arsenic wastes are defined as hazardous if their toxicity characteristic (TC) exceeds 5 mg/l of arsenic. The Toxicity Characteristic Leaching Procedure (TCLP) is a method by which waste is evaluated to determine if it exceeds the TC. If waste is < 0.5% dry-weight solids, then the liquid is defined as the TCLP extract and concentrations in it are compared against the TC level to determine if it is hazardous. If the waste is ≥ 0.5 % dry-weight solids, then a TCLP that conservatively simulates leaching from a landfill is used to determine if the TC level would be exceeded. EPA considered TC and TCLP results from residuals produced by the treatment technologies under consideration and selected only those technologies that would not produce a hazardous waste.

Upon the review of public comments and further analysis, EPA agrees with comments that some of the treatment train technologies in the decision tree of the proposed rule could have created hazardous wastes under certain operational circumstances. Thus, EPA has narrowed its selection of available technologies in the decision tree for the final rule as indicated in Table V.F–4.1. EPA believes that the treatment options included in Table V.F–4.1 can address all treatment challenges without creating hazardous wastes, while being able to achieve compliance with the final rule. EPA has revised its national costs upward to reflect the changes in the decision tree. These costs are described in more detail in this

preamble and in support documents for this rule (EPA, 2000o and EPA, 2000t).

More specific rationale for the changes in the treatment train technologies considered in the decision tree are discussed in the following paragraphs and in the ''Technology and Cost Document'' (EPA, 2000t).

a. Anion exchange. When anion exchange resins are cleaned, they create a regeneration brine. Influent sulfate and arsenic concentrations, regeneration level, and rinse volume influence the resultant brine concentration levels of arsenic. EPA conducted modeling to determine the feasible operating conditions and source water arsenic and sulfate concentrations under which anion exchange could effectively remove arsenic without creating an arsenic brine that exceeded an arsenic concentration of 5 mg/L. Based on this analysis (EPA, 2000t), EPA determined brine arsenic concentrations could exceed 5 mg/L when: (a) Arsenic influent levels exceed 15 µg/L and sulfate concentrations exceed 25 mg/L, and (b) when arsenic influent levels exceed 25 µg/L and sulfate concentrations ranged between 25 and 90 mg/L. Based on this analysis, EPA eliminated landfills and evaporation ponds from the final decision tree for the conditions indicated in Table V.F–4.1.

As part of its proposed and final decision tree evaluation, EPA assumed that brine streams with < 0.5% solids could potentially be disposed of through domestic sewage or mixtures of domestic sewage to POTWs regardless of the TC, since this is excluded from regulation under RCRA. Piping the brine directly to the POTW without passing through the sewer system does not meet the exclusion, nor does trucking the brine to the POTW. Even though brine disposal via sewage to POTWs is not restricted by RCRA, EPA recognizes that brine disposal can be restricted by the POTW's pretreatment programs. POTWs may establish Technically Based Local Limits (TBLLs) for arsenic to control: arsenic concentrations in POTW biosolids, arsenic concentration in the POTW discharge, or total dissolved solids (TDS) in the POTW discharge.

Many comments indicated that significant increases in total dissolved solids would make brine disposal to a POTW unacceptable, especially in the Southwest where water resources are scarce. Even under the lowest regeneration level of 5.1 lb/ft^3 assumed in EPA's analysis, TDS increases would likely be prohibited by POTWs when influent sulfate concentrations exceed 90 mg/L, and limited to POTWs where brine volume is very small compared to total volume for sulfate concentrations between 25 and 90 mg/L. Therefore, as described in section I.F., EPA modified the compliance decision tree to assume systems with sulfate concentrations greater than 50 mg/L would not select anion exchange as a treatment technology. In its final decision tree, EPA assumed that drinking water plants with sulfate concentrations of less than 20 mg/l and with a regeneration frequency of 1500 bed volumes, or with sulfate concentrations between 20 and 50 mg/l and a regeneration frequency of 700 bed volumes, might use anion exchange with waste disposal via sewage to POTWs and be able to comply with local TBLLs. In the final decision tree less than 10% of the systems are assumed to use anion exchange versus over 50% of the systems being assumed to use this technology under the proposal.

b. Activated alumina. The proposed rule considered activated alumina with regeneration and listed discharge to a sanitary sewer as the disposal mechanism for the brines. Many comments on the proposed rule noted that TBLLs for arsenic or total dissolved solids might restrict discharge of brine streams to the sanitary sewer. Under today's final rule (see section I.F.), regeneration of activated alumina media is not recommended for a number of reasons, including the difficulty of disposing of the brines. In the final decision tree, EPA assumes disposal of spent AA media (either from central treatment or POU) to landfills as the waste disposal method for AA. EPA believes that spent AA media will be nonhazardous because the TCLP test is conducted using weak acid at a pH of 5 which is near the optimal pH for adsorption of arsenic onto AA (Kempic, 2000). Wang et al. (2000) evaluated AA spent media from two small systems having treating influent arsenic concentrations of > 50 µg/l and found TCLP with arsenic concentrations of 0.07 mg/L or less, well below the TCLP limit of 5 mg/L. Some public comments indicated concern that the TCLP test conditions at the pH of 5 may not reflect conditions at landfills which may have higher pHs. In response, EPA notes that the TCLP is the defining test specified in 40 CFR 261.24 for determining whether a waste is TC hazardous, and it applies regardless of the actual management of the waste unless some exemption applies.

In the final decision tree, EPA has revised the treatment train assumptions for AA to be operated in series (i.e., two treatment units in sequence rather than as singular units as was considered under the proposal) under various pH conditions (see Table V.F–4.2). Operation in series will allow longer-run times and more cost-efficient disposal of spent media. The range of pH conditions is assumed in consideration of public comments that some utilities will prefer to operate without pH adjustment, thereby minimizing oversight and the ''footprint'' of land needed for the treatment facilities (since no additional chemical feed or storage facilities are needed). While pH adjustment to low levels will optimize AA removal of arsenic, this may not be an option for certain facilities depending upon land availability. Therefore, EPA considers a wide range of pH conditions of AA in the series mode.

c. Reverse osmosis. Except for POU treatment, EPA did not use reverse osmosis in the decision tree of either the proposed or final rule (EPA, 2000h); EPA, 2000o). The concentrate stream from POU devices can be disposed of through discharge into domestic wastewater and thereby be exempt from RCRA regulation. It would also be highly unlikely for the concentrate stream to pose problems with TBLLs because only about 1% of the household water is treated, thereby minimally influencing the quality of the sewage reaching the POTW. Therefore, the decision tree to the final rule includes POU reverse osmosis.

TABLE V.F–4.1.—TREATMENT TRAINS IN FINAL VERSUS PROPOSED ARSENIC RULE DECISION TREE

Treatment train: treatment & residuals management combination	National cost estimate assumes will be selected by systems in		Reason for change
	Proposed rule	Final rule	
Regionalization	NO	NO	N/A
Alternate Source	NO	NO	N/A
Modify Lime Softening	YES	YES	N/A

TABLE V.F–4.1.—TREATMENT TRAINS IN FINAL VERSUS PROPOSED ARSENIC RULE DECISION TREE—Continued

Treatment train: treatment & residuals management combination	National cost estimate assumes will be selected by systems in		Reason For Change
	Proposed rule	Final rule	
Modify Coagulation/Filtration	YES	YES	N/A
Anion Exchange (25 mg/L sulfate) & POTW discharge.	YES	YES	Treatment name revised—Anion Exchange (<20 mg/L sulfate).
Anion Exchange (150 mg/L sulfate) & POTW discharge.	NO	NO	N/A
Anion Exchange (25 mg/L sulfate) & Evaporation Pond, Landfill.	YES	NO	Brine stream may be hazardous waste. Commenter issue—EPA evaluation.
Anion Exchange (150 mg/L sulfate) & Evaporation Pond, Landfill.	NO	NO	N/A
Activated Alumina (16500 Bed Volumes) & Landfill	YES	REVISED	Revised approach uses multiple columns in series operation.
Activated Alumina (3000 Bed Volumes) & Landfill	NO	NO	N/A
Reverse Osmosis & direct discharge	NO	NO	N/A
Reverse Osmosis & POTW discharge	NO	NO	N/A
Reverse Osmosis & Chemical Precipitation, Landfill.	NO	NO	N/A
Coagulation Microfiltration & Mech. Dewatering, Landfill.	YES	YES	N/A
Coagulation Microfiltration & Non-Mech. Dewatering, Landfill.	YES	YES	N/A
Oxidation Filtration & POTW discharge	YES	YES	N/A
Anion Exchange (25 mg/L sulfate) & Chem Precipitation, Landfill.	YES	NO	Brine stream may be hazardous waste. Commenter issue—EPA evaluation.
Anion Exchange (150 mg/L sulfate) & Chem Precipitation, Landfill.	YES	NO	Brine stream may be hazardous waste. Commenter issue—EPA evaluation.
Activated Alumina (16500 BV) & POTW	NO	NO	N/A
Activated Alumina (3000 BV) & POTW	NO	NO	N/A
Anion Exchange (90 mg/L sulfate) & POTW	YES	REVISED	Lower sulfate concentration selected to minimize total dissolved solids increase. Commenter issue—EPA evaluation.
Anion Exchange (90 mg/L sulfate) & Evaporation Pond, Landfill.	YES	NO	Brine stream may be hazardous waste. Commenter issue—EPA evaluation.
Point-of-Entry Activated Alumina	YES	NO	Run length only exceeds six months when finished water pH <7.5
Point-of-Use Reverse Osmosis	YES	YES	N/A
Point-of-Use Activated Alumina	YES	YES	N/A

TABLE V.F–4.2.—NEW OR REVISED TREATMENT TRAINS

Treatment Train	Revision
Activated Alumina (pH7-pH8) & Landfill.	Series Operation.
Activated Alumina (pH8–8.3) & Landfill.	Series Operation.
Activated Alumina (pH adjusted to pH6—23,100 Bed Volumes) & Landfill.	Series Operation.
Activated Alumina (pH adjusted to pH6—15,400 Bed Volumes) & Landfill.	Series Operation.
Anion Exchange (20–50 mg/L sulfate) & POTW.	Use 700 Bed Volumes as Run Length.

5. Emerging Technologies

A number of comments state that several of the emerging technologies discussed in the proposal (*e.g.,* granular ferric hydroxide, see section I.F) are likely to be the most cost effective treatment option for systems, particularly small systems. These comments state that systems may not select these emerging technologies because they have not been listed as BAT. In response, EPA must clarify that systems are not required to use BAT to achieve compliance with the MCL. A system may use any technology that is accepted by the State primacy agency provided the technology achieves compliance with the MCL. However, if a system is unable to meet the MCL with its chosen technology, the system will not be eligible for a variance unless the installed technology is listed as BAT. Other comments indicated that there will not be sufficient time for further testing of these emerging technologies prior to the effective date of the MCL. EPA notes that because of the capital improvements required for compliance with the MCL, the effective date of today's rule is 5 years from the date of promulgation for all system sizes. This should provide systems with adequate time for testing of the emerging technologies. Moreover, States may, as described in section I.H, provide small systems with up to an additional nine years to comply through exemptions.

G. Costs

1. Disparity of Costs

Many public comments stated that EPA substantially underestimated costs for implementing the proposed rule. Comments pertained to national cost or regional cost estimates and system level cost estimates. Commenters stated that EPA's national cost estimates were low because: (a) The decision tree led to an over selection of technologies with low associated costs, and (b) the system

level costs associated with the selected technologies were low. Elaboration of public comment concerns and EPA's response in each of these categories follows. Also, since many public comments referred to the report ''Cost Implications of a Lower Arsenic MCL'' (Frey *et al.*, 2000) as a basis for their comments, EPA analyzed the report in detail. As noted below, the Agency disagrees with the approach Frey *et al.* (2000) used to produce the cost estimates in this report.

a. What is EPA's response to major comments on the decision tree for the proposed rule? Commenters indicated that EPA's decision tree did not adequately recognize constraints in technology selection including feasibility of waste disposal, concerns with compliance with other EPA regulations (*e.g.*, RCRA and CWA), land availability, complexity of operation and availability of skill level (particularly for small systems), and excess use of water in water scarce areas. Particular concern was raised by the extent to which EPA predicted that anion exchange would be used given concerns with sulfate and total dissolved solids, chromatographic peaking (possible rapid breakthrough of arsenic at above influent concentration levels due to competition from other ions), and handling of regeneration process streams and disposal of wastes (some of which may be hazardous). Commenters also suggested that EPA over predicted the use of greensand filtration since it only removes a limited amount of arsenic at low iron concentrations. Comments suggested that EPA should consider much greater use of activated alumina in the spent media replacement mode with disposal to landfills because of facility of operation and low costs. Comments also suggested use of reverse osmosis and nano-filtration in areas unlikely to have a water scarcity problem. Although central treatment with reverse osmosis was listed as one of the possible compliance technologies under the proposed rule, it was not used in the EPA's decision tree.

In preparing the cost estimate for the proposed rule, EPA predicted compliance outcomes by considering: (1) Technologies already in place, (2) feasibility of application of the technology, and (3) least cost of technology. Given all available information at the time of proposal, EPA developed its decision tree. EPA received many informative comments pertaining to the feasibility of various treatment technologies considered. EPA agrees with public comments that some of the waste disposal options considered with anion exchange under the proposed rule could create hazardous wastes (see V.F.4. of this preamble). To address this concern EPA has eliminated the following treatment trains from its final decision tree: Anion exchange with chemical precipitation and disposal of waste to landfills, and anion exchange with discharge to evaporation ponds and disposal of waste to landfills.

EPA agrees with public comments that activated alumina is likely to be used by many more systems than EPA predicted in the proposal. In response to comments, EPA revised the treatment train assumptions for AA to be operated in series under various pH conditions. Operation in series will allow longer run times and more cost-efficient disposal of spent media. The range of pH conditions is assumed in consideration of public comments that some utilities will prefer to operate without pH adjustment, thereby minimizing oversight and the ''footprint'' needed for the treatment facilities. While pH adjustment to pH 6.0 will optimize AA removal of arsenic, this may not be an option for certain facilities depending upon available land and expertise. Thus, EPA recognizes higher operational costs for AA for a substantial number of systems operating at less than optimal pH.

Research (Subramanian *et al.*, 1997) indicates that oxidation filtration (greensand filtration) achieved about 80% removal of arsenic when the iron to arsenic ratio was 20:1 but less than 50% removal when the iron to arsenic ratio was 7:1. In developing national cost estimates, EPA assumed that systems would opt for this type of technology only if more than 300 µg/L of iron was present in the source water and no more than 50% arsenic removal was needed to achieve the MCL. EPA believes that its applicability assumptions for greensand filtration are conservative and therefore continues to support its usage in the decision tree for the final rule. Greensand filtration is a relatively inexpensive technology that may be appropriate for those systems that do not require much arsenic removal and have high iron in their source water. However, in the decision tree for the final rule, EPA lowered the expected use of greensand filtration to systems serving less than 3,300 (versus in systems serving less than 10,000 under the proposed rule) and reduced its usage by about ⅓ (EPA, 2000h; EPA, 2000h). This drop is mainly attributed to the change in the MCL and fewer systems having arsenic at levels between 5 µg/L and 10 µg/L than between 10 and 20 µg/L. The ranges 5–10 µg/L and 10–20 µg/L reflect the arsenic concentration ranges that systems would have to fall within to be able to consider greensand, if only 50% removal efficiency is assumed.

EPA continues to believe that reverse osmosis, while a very effective technology for removing arsenic, is not likely to be used as a centralized treatment option (even in areas of ample water supply) because of higher costs relative to other treatment options. EPA did not consider nanofiltration a likely compliance technology because of high costs relative to other technologies and decreased removal efficiency when operated to constrain production of waste streams.

b. What is EPA's response to comments on system level costs? Under the proposed rule EPA only included activated alumina (AA) costs for small systems. A number of comments indicated that EPA should revise its decision tree to include AA and associated costs for all system sizes because AA is more economical than anion exchange. After considering the information provided by these comments, EPA expanded estimates of the use of AA in the decision tree for the final rule. EPA also revised its decision tree and developed costs for four different types of AA treatment for all system sizes—two for unadjusted pH and two where the pH has been adjusted to the optimal pH of 6. (The effects of these changes in the decision tree analysis are described in section V.G.1). The main change between the design used for the proposed rule versus the final rule is that smaller columns containing the activated alumina are operated in series rather than as a single column. This will provide greater utilization of the media before disposal and is more consistent with the designs used by commenters in evaluating disposable activated alumina. EPA's new AA costs specify different unit cost equations and flow boundary conditions for small versus large systems. Also, EPA has included new operating and maintenance (O&M) costs for waste disposal of spent AA media. The effect of all these changes is, in general, to decrease capital costs but to increase O&M costs and to increase overall AA system level costs within a particular size category. Despite these increases in costs for AA, AA is by far the most used technology among ground water systems in the final decision tree. The ''Arsenic Technologies and Costs'' (T&C) document (EPA, 2000t) for the final rule describes in detail the basis for the unit costs used for each of the new types of AA treatment.

Several comments indicated that EPA's cost estimates were calculated for flow rates outside of their boundary conditions and thus the accuracy of many of the unit costs are in error. EPA analyzed the data provided by these comments and revised the cost equations used to estimate unit costs for the final rule. We modified cost equations and flow boundary conditions for AA, modified coagulation filtration, modified lime softening, anion exchange, coagulation microfiltration, and POU treatment. Most of the unit costs increased relative to those used for the proposed rule. The T&C document (EPA, 2000t) describes the basis for the unit costs used for the final rule.

A number of comments stated that EPA's cost estimates should include pre-oxidation costs with AA in ground waters since many systems may not already be disinfecting. EPA must clarify that the cost estimates included prechlorination costs for any system that did not have existing disinfection treatment. For ground water systems, 13% to 54% (depending upon system size) of systems predicted to use AA were assumed to add pre-oxidation.

Several comments indicated that EPA's cost estimates for the proposal did not include corrosion control costs. However, the corrosion control costs were included as a component of the unit costs for the following technologies: modified lime softening, modified coagulation filtration, coagulation assisted microfiltration, and activated alumina options operating at the optimal pH. EPA believes that through appropriate use of corrosion control, systems will be able to comply with the lead and copper rule and meet the arsenic MCL.

c. What is EPA's response to comments that state the report ''Cost Implications of a Lower Arsenic MCL'' (Frey et al., 2000), be used as a basis for reflecting more realistic national costs than EPA's estimates? A number of comments noted that the report ''Cost Implications of a Lower Arsenic MCL'' (Frey *et al.*, 2000), ''the Cost Implications Report,'' or ''the report,'' provides best-case national estimated annualized costs of $1,460 million at the 5 µg/L arsenic MCL option and $605 million at the 10 µg/L MCL option. Many comments stated that EPA's national cost estimates were unrealistically low based upon the Cost Implications Report.

EPA appreciates the substantial level of information available from the Cost Implication Report in regard to evaluation of technological feasibility for arsenic removal. This report was one of several sources that influenced EPA to predict much less use of anion exchange and much greater use of activated alumina in the decision tree for the final rule. However, EPA believes that some parts of the report's analysis contributed to overestimating national cost estimates. These issues include differences in flow rate assumptions, unit costs, and national estimates for arsenic occurrence, summarized below. A more detailed analysis is available in EPA's Response to Comment Document for the final rule.

Flow rate assumptions. Flow rate assumptions are used with engineering cost models to estimate system level treatment costs for various technologies considered appropriate for achieving compliance. If flow rates are overestimated, system level treatment and national costs will be overestimated. EPA uses design flow rates to estimate capital costs and average flow rates to estimate operational and maintenance costs.

The Cost Implications Report (Frey *et al.*, 2000) uses significantly higher flow rates than EPA (EPA, 2000h; EPA, 2000o) for conducting national cost impact analysis for alternative arsenic MCLs. For most population categories of systems ranging between 3301 and 1 million people, AWWARF used flow rates that were 2–4 times higher than EPA's assumptions. Based on EPA's analysis of the Cost Implication Report it appears that the report used more system size categories than EPA and transferred flow rates for larger-system size categories into smaller-system size categories. EPA believes that differences in the flow rate assumptions would produce an estimate of at least $400 million per year higher than an estimate using EPA's flow rates for the proposed arsenic MCL option of 5 µg/L.

Since the release of the Cost Implications Report, the authors revised their analysis to include different flow rates (Frey *et al.*, October 2000), ''the Updated Cost Implications Report.'' The updated report based its new flow rates on the equations provided in the Proposed Arsenic in Drinking Water Rule Regulatory Impact Analysis (EPA, 2000h). The flow rates for ground water systems were based on the population/flow equations for publicly owned ground water systems and the authors selected the midpoint in each population category (e.g., using a flow of systems serving 550,000 persons to estimate costs for systems serving between 100,000 and 1 million people). In the Updated Cost Implications Report the authors state that:

> [T]he cost response to the difference in flow rates is mixed due to the large flow increases in the two largest population categories (100,0000 to 1 million and > 1 million) versus the decreases in the other flow categories (5,000 to 100,000).

EPA believes that the revised analysis with the new flow rates in the Updated Cost Implications Report still overestimates costs. First, the revised design and average flows are only larger for ground water systems with populations greater than 1 million people. Second, estimating flow rates for systems within a category using the population midpoint assumptions in the revised analysis continues to cause cost overestimates because many more systems in each population size category occur in the lower part of the range than the upper part of the range. For example, EPA's data indicate that, in the flow category of ground water systems serving 100,000 to 1 million people, one-half of the systems have populations under 173,000 people (EPA, December 1997 Freeze of Safe Drinking Water Information System) and that the mean population among systems is 248,000 people (EPA, 2000a). In its cost estimates, EPA considers the distribution of flow rates within each size category for estimating system level cost contributions to the national impact (EPA, 2000h; EPA, 2000o). Third, Table 4.6 of the Cost Implication Report (Frey *et al.*, 2000) provides a distribution of ground water systems nationally by system size and arsenic concentration, and indicates there are no ground water systems serving more than 1,000,000 projected to have arsenic concentrations that exceed 5 µg/L. Since no ground water systems serving more than 1,000,000 people need to treat for MCL options of 5 µg/L or higher, the national costs given in the revised report due to the revised flow rate assumptions in all categories should be lower for MCL options at or above 5 µg/L.

On a related issue, EPA believes that the operation and maintenance cost equations for anion exchange, activated alumina, coagulation/microfiltration, and nanofiltration in the Cost Implication Report (Frey *et al.*, 2000) were based on design flow rather than average flow. Using the operational and maintenance cost equations based on design flow rather than average flow significantly increases cost estimates, particularly for smaller systems (EPA's analysis indicates that for systems with a design flow of 1 M.D., the total annualized costs would increase by about 25% and for systems with a design flow of 10 M.D., the total annualized costs would increase by about 5%).

Unit Cost assumptions: The Cost Implication Report (Frey *et al.*, 2000)

develops unit cost equations for a technology type based on a wide range of operating conditions, some of which may not be very cost effective (*e.g.,* anion exchange with sulfate concentrations ranging from 25 to 150 mg/l). Because of their recognized lack of cost effectiveness for particular situations, the technologies have limited application in the national compliance forecast, even in situations with sulfate concentrations less than 25 mg/L. This costing approach tends to overestimate costs for systems with favorable site specific conditions. On the other hand, EPA developed cost equations for technology types within an operating range for which the technology can most cost effectively operate (*e.g.*, anion exchange with sulfate concentrations of less than 25 mg/L) and used these equations for the limited number of systems that would meet the constraints. Utilities would not likely choose technologies unless they were favorable to use and thus only those conditions at which the technology is used should be costed, in our view.

EPA believes that the Cost Implication Report case study costs for activated alumina were significantly overestimated due to the vessel costs. The vendor quote used for vessel costs is for a complete activated alumina system, including the costs for vessels, media, pipes and valves, chemical feed and storage, start-up, shipping and contingencies. The vendor quote presents budget prices for three design flows and different size vessels are used for each design flow. The vessel sizes are listed with the budget price, along with many additional costs, which may have been a source of confusion. Since activated alumina is the most used technology in the compliance forecast in the Cost Implications Report, double counting full system costs for activated alumina will significantly affect national cost estimates, particularly for smaller systems.

Arsenic occurrence assumptions. The occurrence distributions based on the Frey and Edwards (1997) National Arsenic Occurrence Survey (NAOS) change throughout Chapter 4 of the Cost Implication Report. The national compliance costs are based on the occurrence distribution with the highest number of systems above the MCL options, but no basis is given for this selection. EPA believes that the arsenic occurrence distribution used in the report for the compliance forecast analysis significantly overestimates the distribution of arsenic occurrence above 20 µg/L and this significantly biases costs upward.

2. Affordability

Many commenters expressed concern that their system, or many households served by their system, would be unable to afford to comply with the proposed arsenic standard and that the DWSRF would be incapable of providing significant assistance. Concerns relating to costs and burden contributed to the Agency's decision to promulgate a standard of 10 µg/L rather than the proposed standard of 5 µg/L. The Agency's decision to promulgate a standard of 10 µg/L significantly reduces the impacts on small systems. At the proposed standard of 5 µg/L, about 6,500 community water systems would have needed to install treatment. At the promulgated standard of 10 µg/L, about 2,800 small community water systems (and 1100 NTNCWS) will need to install treatment. Total capital costs for the promulgated standard are 57% lower (for both community water systems and NTNCWS) than they would have been for the proposed standard. Although the number of systems needing to treat at the promulgated standard is well under one half of the number that would have needed to treat at the proposed standard, the household level impact for those systems needing to treat is about the same.

The Agency believes that affordability of drinking water at the household level is a function of two key variables: price of the water and the ability of the household to pay. Each of these two key variables is, in turn, a function of a number of other variables. A comprehensive and meaningful analysis of affordability for an individual system must include a complete assessment of all of the variables that influence both price and ability to pay. These variables are highly site specific. That is why the framework for addressing affordability concerns in SDWA consists of two distinct parts: (1) A national level affordability analysis focused on assessing what would be affordable (from a national perspective) for typical systems in a size class, and (2) State-level analysis, using State-developed criteria, to assess affordability for any specific system.

The price of drinking water (the actual charge imposed on the household for its water service) reflects the complex interplay of many variables. These variables include the water system's full cost of doing business, subsidies or other forms of financial assistance that offset some of the system's costs, and the allocation of costs by the water system to its users and the rate design employed by the water system. The system's cost of providing service is influenced by many different factors, *e.g.*, the quality of the source water available to the system, the type of treatment employed and the skill of its operation, and the basic organizational or institutional structure of the water system. Systems that effectively work together, perhaps by combining management, will realize lower overall costs compared to the same systems working independently. Section I.L discusses Federal financial assistance which is available to help systems comply with arsenic and other drinking water standards. Section III.E.4 further discusses issues considered by EPA in assessing the affordability of the arsenic rule.

One commenter submitted a study which concludes that establishing a new arsenic MCL at a level of 5 µg/L (or lower) will raise serious concerns about the affordability of water service for a majority of affected ground water systems. The Agency reviewed the study and notes a number of significant deficiencies in its assumptions and general methodology. The Agency disagrees with the commenter's selection of $50 per household per year as affordable on the basis of expenditures on lottery tickets and with the commenter's selection of $100 per household/year as posing ''serious affordability concerns'' on the basis of it representing some percentage of expenditures on health care or telephone service. The Agency notes that the Consumer Expenditure Survey, compiled by the Bureau of Labor Statistics, offers a broad overview of expenditure patterns across households of various incomes. The Consumer Expenditure Survey's data do not necessarily support the contention that an increase in water bills would force a low-income household to trade off health care or some other ''essential'' expenditure to pay the water bill. Clearly, however, individual household circumstances vary greatly and certain individual households may face difficult choices. Another important consideration is that assessing expenditure trade offs by low-income households must fully account for all the assistance such households can receive, including subsidized housing, medical care through Medicaid, food stamps, and so on. Simply looking at a low-income household on the basis of its cash income can overlook important assistance available. The commenter also assumes that if a regulation increases the cost of water by 0.5% of median household income in a community, it might raise an affordability concern. The commentor

justifies this value by asserting that such an increase would be more than a 50% increase in the water bill for a typical household. The Agency finds this argument unconvincing. For a household with the median income, the water bill would represent about 0.9% of income. It is widely acknowledged that water has been historically underpriced. Thus, saying that no more than a 50% increase would be affordable is to accept the historic underpricing as appropriate. The commenter also assumes the cost estimates that EPA believes are significantly overestimated are correct. Thus, the commenter's conclusion that establishing a low arsenic standard will raise serious concerns about the affordability of water service for a majority of affected ground water systems is unsupported. The subsequent conclusion that existing variance and grant programs would not be adequate to alleviate affordability concerns is likewise unsupported. (See section I.H. of today's preamble for a discussion of variances and exemptions and section I.L. for a discussion of financial assistance available for complying with this rule.)

A number of commenters indicated that they did not agree with EPA's approach for assessing national level affordability. Affordability is a complex concept. Numerous different approaches have been developed for assessing affordability of drinking water and/or wastewater service. Many of these approaches are summarized in the Agency's publication ''Information for States on Developing Affordability Criteria for Drinking Water'' (EPA, 1998a). It is essential that the specific purpose for which any affordability criterion is developed be clearly understood. EPA's national affordability criteria are developed and applied for a very narrow and specific purpose.

Section 1412(b)(4)(E)(ii) of SDWA , as amended, requires EPA to list technology (considering source water quality) that achieves compliance with the MCL and is affordable for systems in three specific population size categories: 25–500, 501–3300, and 3301–10,000 when promulgating a national primary drinking water regulation which establishes an MCL. If, for any given size category/source water quality combination, an affordable compliance technology cannot be identified, section 1412(b)(15)(A) requires the Agency to list a variance technology. Variance technologies may not achieve full compliance with the MCL but they must achieve the maximum contaminant reduction that is affordable considering the size of the system and the quality of the source water. In order for the technology to be listed, EPA must determine that this level of contaminant reduction is protective of public health.

Thus, EPA developed national affordability criteria for the narrow and specific purpose of determining whether or not an affordable compliance technology exists, from a national perspective, for the specified size categories of systems, considering the quality of source waters available to them. The key point at issue here is what EPA should consider ''affordable'' from a national perspective. EPA does not define national level affordability in terms of what would be affordable to the least affluent water systems. Likewise, EPA does not define national level affordability in terms of what would be affordable to the most affluent water systems. Rather, a determination of national level affordability is concerned with identifying, for each of the given size categories, some central tendency or typical circumstance relating to their financial wherewithal.

The metric EPA selected for this purpose is the median household income for communities of the specified sizes. Some commenters expressed concern that EPA was using the national median household income (across all sizes of systems) in making judgments on national-level affordability. The Agency wishes to clarify that this was not the case. We used median household income for communities of the specified size categories, as documented in EPA's August 6, 1998 **Federal Register** notice (EPA, 1998h). The household is thus the focus of the national-level affordability analysis. EPA considers treatment technology costs affordable to the typical household if they represent a percentage of MHI that appears reasonable when compared to other household expenditures. This approach is based on the assumption that the affordability to the median household served by the CWS can serve as an adequate proxy for the affordability of technologies to the system itself. The national-level affordability criteria have two major components: current annual water bills (baseline) and the affordability threshold (total % of MHI directed to drinking water). Current annual water bills were derived directly from the 1995 Community Water System Survey. Based on 1995 conditions, 0.75–0.78% of MHI is being directed to water bills for systems serving fewer than 10,000 persons.

The fundamental, core question in establishing national-level affordability criteria is: what is the threshold beyond which drinking water would no longer be affordable for the typical household in each system size category? Based upon careful analysis, EPA believes this threshold to be 2.5% of MHI. In establishing this threshold, the Agency considered baseline household expenditures (as documented in the 1995 Consumer Expenditure Survey, Bureau of Labor Statistics) for piped water relative to expenditure benchmarks for other household goods, including those perceived as substitutes for higher quality piped water such as bottled water and POU/POE devices. Based on these considerations, EPA concluded that current household water expenditures are low enough, relative to other expenditures, to support the cost of additional risk reductions. The detailed rationale for the selection of 2.5% MHI as the affordability threshold is provided in the guidance document entitled ''Variance Technology Findings for Contaminants Regulated Before 1996'' (EPA, 1998l). The difference between the affordability threshold and current water bills is the available expenditure margin. This represents the dollar amount by which the water bill of the typical (median) household could increase before exceeding the affordability threshold of 2.5% of MHI.

The Agency recognizes that baseline costs change over time as water systems comply with new regulations and otherwise update and improve their systems. MHI also changes from year to year, generally increasing in constant dollar terms. For example, since 1995 MHI has increased (in 1999$) by 9.6%. Thus, to determine the available expenditure margin (the difference between the affordability threshold and the baseline) for each successive rule, adjustments would need to be made in both the baseline and the MHI. The Agency believes that, for purposes of assessing national-level affordability of the arsenic rule, the unadjusted baseline and unadjusted MHI are appropriate. Making adjustments to these two factors would not materially alter the outcome of the analysis, since both the baseline and the MHI would increase, and not by dramatically differing percentages. Thus the difference between the two would not significantly change.

By definition, the MHI is the income value exactly in the middle of the income distribution. The median is a measure of central tendency; its purpose is to help characterize the nature of a distribution of values. The Agency recognizes that there will be half the households in each size category with incomes above the median, and half the households with incomes below the median. The objective of a national-level affordability analysis is not to

determine what is affordable to the poorest household in the U.S. Nor is it to determine what the richest household in the U.S. could afford. Rather, it is to look across all the households in a given size category of systems and determine what is affordable to the typical, or ''middle of the road'' household.

The distinction between national-level affordability criteria and affordability assessments for individual systems cannot be over-emphasized. The national-level affordability criteria serve only to guide EPA on the listing of an affordable compliance technology versus a variance technology for a given system size/source water combination for a given contaminant. In the case of arsenic, EPA determined that nationally affordable technologies exist for all system size categories and has therefore not identified a variance technology for any system size/source water combination. This means that EPA believes that the typical household in each system size category can afford the costs associated with the listed compliance technologies. EPA recognizes that individual water systems may serve a preponderance of households with incomes well below the median, or may face unusually high treatment costs due to some unusual local circumstance. As discussed more fully in sections I.H, I.L, and III.F.4, there are a number of tools available to address affordability concerns for these individual water systems. The major tools are financial assistance (low-interest loans and grants); extended compliance time-frames under a State-issued exemption; life-line and other types of rate structures that systems may use; and, restructuring of system management and operations through partnerships among systems.

3. Combined Cost of New Regulations

A number of commenters expressed concern about the cumulative cost to water systems of new drinking water regulations. The Agency recognizes this concern and acknowledges that there is a small percentage of systems faced with co-occurrence and for whom there will be multiple treatment requirements. However, for such systems, the Agency notes that installation of treatment for one contaminant (such as arsenic, in this case) may often reduce the amount of treatment needed to remove many types of subsequently regulated contaminants, since the initial treatment will likely remove at least some of the subsequently regulated contaminant; particularly, certain types of inorganic contaminants.

The most common cumulative impact will be that associated with initial monitoring. Most systems will need to conduct at least some limited initial monitoring for most regulated contaminants. However, for the vast majority of systems that will not detect the contaminant at levels of concern, subsequent monitoring will be limited and infrequent, with monitoring variances available for up to once every nine years.

4. Projected Effects of the New Standard on Other Regulatory Programs

Several commenters felt that EPA has underestimated the costs of the proposed rule by failing to fully consider the possible costs of a new, lower drinking water standard on other regulatory programs, particularly hazardous waste. EPA disagrees and does not believe that certain ancillary costs identified by commenters should be considered in the cost of compliance analysis nor should they be a factor considered in establishing the MCL. For instance, the prospective costs of future CERCLA site clean-up actions are not among the factors that SDWA requires EPA to consider in establishing an MCL. Moreover, there are a host of site-specific factors taken in account in any CERCLA site clean-up situation beyond the clean-up standard itself (which may be an MCL under the CERCLA requirement to consider ''applicable or relevant and appropriate requirements'' (ARARs)). In the case of RCRA, EPA notes that the arsenic in drinking water final rulemaking does not necessarily trigger a revision of the Toxicity Characteristic standard under RCRA. Thus, there are not necessarily any new costs to entities affected by RCRA requirements as a result of this rulemaking. In any case, SDWA section 1412(b)(3)(C)(i)(III) specifically excludes consideration of such costs from other regulatory programs in the development of drinking water standards.

H. Benefits of Arsenic Reduction

Significant comments on the benefits analysis for the proposed arsenic rule addressed the topics of the timing of health benefits accrual (latency); the use of the Value of Statistical Life (VSL) as a measure of health benefits; the use of alternative methodologies for benefits estimation; the Agency's consideration of non-quantifiable benefits in its regulatory decision-making process; the Agency's analysis of incremental costs and benefits of the proposed arsenic rule; and, the Agency's assumption that health risk reduction benefits will begin to accrue at the same time costs begin to accrue.

1. Timing of Benefits Accrual (Latency)

Some commenters argued that EPA should have discounted its health benefits for the arsenic rule over a cancer latency period. As noted in the proposed rule, EPA committed to taking this issue before the Science Advisory Board (SAB) for its advice and recommendations.

EPA brought this issue before the SAB in a meeting held on February 25, 2000 in Washington, DC (65 FR 5638, February 4, 2000; EPA, 2000a). The SAB submitted a final report on their findings and recommendations to us on July 27, 2000 (EPA, 2000j). This final report was made available on the EPA website at *www.epa.gov/sab/eeacf013.pdf.*

The SAB Panel noted that benefit-cost analysis, as described in the Agency's Guidelines [for economic analysis], is not the only analytical tool nor is efficiency the only appropriate criterion for social decision making, but notes that it is important to carry out such analyses in an unbiased manner with as much precision as possible. In its report, the SAB recommended that the Agency continue to use a wage-risk based VSL as its primary estimate; any appropriate adjustments that are made for timing and income growth should be part of the Agency's main analysis while any other proposed adjustments should be accounted for in sensitivity analyses to show how results would change if the VSL were adjusted for some of the major differences in the characteristics of the risk and of the affected populations.

Specifically, the SAB report recommended that: (1) Health benefits brought about by current policy initiatives (i.e., after a latency period) should be discounted to present value using the same rate that is used to discount other future benefits and costs in the primary analysis; (2) adjustments to the VSL for a ''cancer premium'' should be made as part of a sensitivity analysis; (3) adjustments to the VSL for voluntariness and controllability should be made as part of a sensitivity analysis; (4) altruism should be addressed in a sensitivity analysis and separately from estimation of the value of a statistical cancer fatality and the circumstances under which altruism can be included in a benefit-cost analysis are restrictive; (5) estimates of VSLs accruing in future years should be adjusted in the primary analysis to reflect anticipated income growth, using a range of income elasticities; (6) adjustments to the VSL for risk aversion should be made in a sensitivity analysis; (7) it is theoretically appropriate to calculate WTP for individuals whose ages correspond to

those of the affected population, but that more research should be conducted in this area; and (8) no adjustment should be made to the VSL to reflect health status of persons whose cancer risks are reduced.

Consistent with the recommendations of the SAB, EPA developed a sensitivity analysis of the latency structure and associated benefits for arsenic, a summary of which is shown in Section III.E of the final preamble. This analysis consists of health-risk reduction benefits which reflect adjustments for discounting, incorporation of a range of latency period assumptions, adjustments for growth in income, and incorporation of other factors such as a voluntariness and controllability. Although the SAB recommended accounting for latency in a primary benefits analysis, the Agency believes that, in the absence of any sound scientific evidence of latency periods for arsenic related cancers, discounted benefits estimates for arsenic are more appropriately accounted for in a sensitivity analysis. Sensitivity analyses are generally reserved for examining the effects of accounting for highly uncertain factors, such as latency periods, on health risk reduction benefits estimates.

2. Use of the Value of Statistical Life (VSL)

Some commenters felt that the Value of Statistical Life (VSL) used by EPA in its analysis of benefits for the arsenic rule was incorrect. EPA disagrees with these commenters for several reasons. First, the VSL used by the Agency in its benefits analysis is based on the most current data available. The VSL, as recommended by Agency guidance and EPA's SAB, is derived from a statistical distribution of the values found in 26 wage-risk studies, which were chosen as the best such studies available from a larger body of studies. This examination of studies was undertaken by EPA's Office on Air and Radiation in the course of its Clean Air Act retrospective analysis. EPA believes the VSL estimate ($6.1 million, 1999 dollars) to be the best estimate at this time and is recommending that this value be used by the various program offices within the Agency. This estimate may, however, be updated in the future as additional information becomes available to assist the Agency in refining its VSL estimate. The VSL estimate is consistent with current Agency economic analysis guidance, which was reviewed by EPA's SAB.

Also, the use of the VSL for benefits valuation is consistent with recommendations from EPA's SAB, which discussed this issue in their meeting on February 25, 2000 in Washington, DC. The SAB's report on their findings and recommendations from the February meeting stated that:

> despite limitations of the VSL estimates, these seem to offer the best available basis at present for considering the value of fatal cancer risk reduction. We therefore recommend that the Agency continue to use a wage-risk-based VSL as its primary estimate, including appropriate sensitivity analyses to reflect the uncertainty of these estimates (EPA, 2000j).

In addition, some commenters disagreed with EPA's valuation of a human life. EPA disagrees with these commenters because the VSL does not represent the value of an actual human life. Rather, the VSL represents the value of people's willingness to pay for small changes in the risk of a fatality.

3. Use of Alternative Methodologies for Benefits Estimation

Several commenters suggested that the Agency use a Quality Adjusted Life Years (QALYs) or a Life Years approach in its valuation of health benefits for the arsenic rule. EPA disagrees with these commenters because the current economic literature does not support these methodologies and EPA believes these approaches are not sufficient for use in economic analyses.

The use of alternative methodologies, such as Quality Adjusted Life Years (QALYs) and a Life-Years approach, has been extensively discussed both within EPA and also before the Environmental Economics Advisory Committee (EEAC) of EPA's SAB. The QALY method allows information on life expectancy and quality of life to be combined into a single number for benefits valuation purposes. QALYs involve rating each year of life on a scale from zero to one, where one represents perfect health and zero represents the worst possible health state. Because patients themselves, or sometimes citizens of the community, are responsible for ''rating'' each year, these quality-of-life tradeoffs are highly subjective and may not be very meaningful. Regarding the use of QALYs, the SAB committee stated that ''there are no published studies that show that persons with physical limitations or chronic illnesses are willing to pay less to increase their longevity than persons without these limitations. People with physical limitations appear to adjust to their conditions, and their WTP to reduce fatal risks is therefore not affected. The EEAC suggests that no adjustments be made to the VSL to reflect the health status of persons whose cancer risks are reduced, unless additional research documents such effects'' (EPA, 2000j).

A Life-Years approach involves use of a Value of Statistical Life Year (VSLY) measure. The VSLY measure values life-years that would be lost if an individual were to die prematurely. The relationship between the value of risk reductions and expected life years remaining is complex; current research does not provide a definitive way of developing estimates of VSLY that are sensitive to such factors as current age, latency of effect, life years remaining, and social valuation of risk reduction. While age adjustments may be desirable from a theoretical standpoint, in the absence of such information, the mainstream economics literature does not support developing VSLY estimates.

The SAB's Environmental Economics Advisory Committee (EEAC), in its report, confirmed this finding. The use of VSLY for valuing life-years lost was found by the EEAC to not have a sufficient theoretical and empirical basis for making any adjustments at this time. While the EEAC agreed that the theoretically appropriate method is to calculate WTP for individuals whose ages correspond to those of the affected population, the Committee recommended that more research be conducted on this topic before the Agency makes any adjustments for age in its estimates of health risk reduction benefits.

Therefore, because of the limitations enumerated above, EPA disagrees with the use of the VSLY as a measure of benefits. This position has also been incorporated in the Agency's Guidelines for Preparing Economic Analyses (EPA, 2000n). The Agency's economic analysis guidelines were reviewed and approved by the Regulatory Policy Council and are considered when the Agency makes economic policy determinations.

At this time, current Agency policy is to use VSL estimates for the monetization of health risk reduction benefits. As noted already, this policy is also consistent with recommendations from the EPA's SAB, which discussed this issue in a meeting held on February 25, 2000 in Washington, DC.

4. Comments on EPA's Consideration of Nonquantifiable Benefits

Some commenters felt that EPA did not fully consider nonquantifiable benefits in their decision-making process. EPA respectfully disagrees with these commenters. SDWA requires that the Agency take into consideration any potential quantifiable and nonquantifiable benefits associated with regulating arsenic in drinking water. To this end, the Agency displayed

quantifiable costs and benefits and nonquantifiable benefits in the same table in the proposal (see Table XI–1 of the proposed rule), so that quantifiable and nonquantifiable benefits were given equal consideration in the determination of a regulatory level. In selecting a proposed MCL of 5 µg/L, the Agency based its risk management decision on both the quantifiable bladder and lung cancer benefits and also on the significant amount of nonquantifiable benefits associated with regulating arsenic in drinking water. In addition, EPA has provided analysis and considered the nonquantified benefits in the same manner for the final rule.

By definition, nonquantifiable benefits cannot be measured and were not measured in the benefit-cost analysis for the arsenic rule. EPA attempted to consider these potential benefits in both the proposed and final rule since the Agency believes they might occur. Such nonquantifiable benefits may include skin cancer, kidney cancer, cancer of the nasal passages, liver cancer, prostate cancer, cardiovascular effects, pulmonary effects, immunological effects, neurological effects, endocrine effects, and customer peace-of-mind benefits from knowing their drinking water has been treated for arsenic.

As stated in section 1412(b)(4)(C) of the SDWA, ''* * * the Administrator shall publish a determination as to whether the benefits of the maximum contaminant level justify, or do not justify, the costs based on the analysis conducted under paragraph (3)(C).'' Paragraph (3)(C) contains the description of the seven Health Risk Reduction and Cost Analysis elements that the Agency must consider. These seven elements include quantifiable and nonquantifiable heath risk reduction benefits, quantifiable and nonquantifiable health risk reduction benefits from reducing co-occurring contaminants, quantifiable and nonquantifiable costs, incremental costs and benefits, effects of the contaminant on the general population as well as on any sensitive sub-populations, possible increased health risks, and uncertainties in the analysis of any of these elements.

5. Comments on EPA's Assumption of Benefits Accrual Prior to Rule Implementation

As noted by some commenters, EPA does not make a benefits adjustment for the period prior to rule compliance. EPA does not make this adjustment for two reasons. First, EPA assumes that costs accrue during the same period and does not adjust these costs to account for a phasing in of the rule. Therefore, the analysis treats benefits and costs in exactly the same manner. Second, the Agency anticipates that many systems will begin installing treatment prior to the compliance date. This will ensure they are in compliance on the date that the rule takes effect. As treatment is installed to meet the compliance date, benefits will begin to accrue to those served by these systems.

I. Risk Management Decision

1. Role of Uncertainty in Decision Making

Several commenters questioned the proposed MCL on the basis of the uncertainties associated with aspects of the technical analyses supporting this rulemaking. Most of these comments dealt with the Agency's analysis of the health effects of arsenic. Section V.B. of today's preamble responds to these comments in more detail, and thus, only a relatively brief response to these comments, as they affect the risk management decision, is offered here. The uncertainties pointed out by commenters, together with the considerable costs of compliance with a new, lower standard, led several commenters to suggest that the Agency promulgate a significantly higher MCL than was proposed.

In response, EPA believes that several considerations are important. First, we note that humans are more sensitive to arsenic than laboratory animals. Thus, assessments of the health effects of arsenic necessarily rely, in part, on studies in which human populations have been exposed to relatively high levels (where demonstrable effects can be clearly seen and distinguished) and in which extrapolations to safe levels can be performed, and very low probabilities of adverse effects are projected. Uncertainties are inherent in any such analysis and would attach to similar kinds of contaminants (for which humans are more sensitive than animals and where no animal model exists). Second, EPA has more fully considered the various uncertainties to which many commenters refer and has striven to account for them either qualitatively and quantitatively. Third, the Agency requested and has carefully considered the advice of the National Research Council of the National Academy of Sciences and the Drinking Water Committee of the Science Advisory Board on these issues as a part of our deliberations leading to a final MCL. In summary, we believe that our analysis of the health risks of arsenic in drinking water is fully supportive of the final MCL and is based upon the best available science. While we acknowledge that uncertainties in our understanding of the health effects of arsenic remain, we believe there is sufficient information to support today's promulgated standard.

2. Agency's Interpretation of Benefits Justify Costs Provision

Many commenters offered a variety of points of view on EPA's cost-benefit analysis and on its interpretation of the provision of SDWA allowing the Administrator to set a level higher than the feasible level if the benefits of a standard do not justify the costs (section 1412(b)(6) of SDWA). EPA appreciates the many comments on its cost-benefit analysis, but respectfully disagrees with those comments that suggest its analysis is fundamentally flawed and does not support the proposed or final rule. Assessment of cost and benefits in cases where not all information can be precisely known, as is the case here, is a challenging exercise. Sections V.G. and V.H. of this preamble to the final rule provide a more detailed response to the various cost and benefit estimation comments received. In summary, we believe these costs and benefits have been correctly calculated, within the limits of available data and information, and that they adequately support both the proposed and final rule. Consistent with our statutory requirements, we have carefully considered costs and benefits analysis in proposing and promulgating a final rule that includes an MCL higher than the feasible level. Based on our further analysis of a variety of factors, including the costs and benefits, and after consideration of the various comments, we have decided to establish the final MCL at a higher level than proposed. As discussed in detail in section III.F. of this preamble, the Agency believes that, at an MCL of 10 µg/L, the benefits justify the costs. In our deliberations, we examined total national costs and benefits, incremental costs and benefits across various optional regulatory levels, and household costs for various system size categories. However, it is important to recognize that the Agency is also required to comply with the statutory requirement to ''maximize health risk reduction.'' Thus, while evaluation of costs and benefits is a key consideration in the exercise of the discretionary authorities under section 1412(b)(6) of the SDWA, the decision criteria used in developing a final MCL also has an important risk reduction component.

Some commenters also stated their belief that the benefits must exceed the costs in order for a particular standard to be ''justified'' in accordance with

section 1412(b)(6) of SDWA. EPA disagrees and believes, for several reasons, that the benefits of the final standard do justify the costs. First, in connection with this rulemaking, EPA notes that there are a number of non-monetizable benefits that limit the value of a strict numeric comparison of costs and benefits. Second, EPA has calculated a range of monetizable benefits and believes that a portion of the range of benefits do, in fact, ''overlap'' the costs. Finally, EPA notes that Congressional report language clarifies the intent of section 1412(b)(6) and indicates that benefits do not need to strictly equal or exceed costs in order for a particular regulatory standard associated with those costs to be justified. (see S. Rep. 104–169, 104th Cong., 1st Sess. at 33.)

3. Alternative Regulatory Approaches

A number of commenters suggested that EPA tailor the arsenic drinking water standard in light of local or regional considerations. Market-based and seasonal standards were suggested in this regard. EPA understands these comments and the desire of these commenters to exercise flexibility in local or Regional decision-making in order to reflect information about local arsenic occurrence patterns, local public health priorities, available resources, or other pertinent factors. EPA notes that SDWA does provide for local and Regional flexibility in the implementation of new standard in a variety of ways. State decisions on use of State Revolving Loan Funds and Public Water System Supervision grant funds should be based upon local needs, local priorities, and available local funds. In addition, States may provide variances to qualifying systems under section 1415(a) of SDWA. States may also grant exemptions to qualifying water systems to provide additional time to comply with a new standard (with an opportunity for extensions) to help address the kinds of situations that many commenters are concerned about. However, SDWA does not provide a basis for establishing regional, local, or further-tailored drinking water standards as these commenters suggest. Rather, SDWA is designed to ensure uniform levels of public health protection across the country (except as specifically provided for in variances from the standard). In addition, certain Executive Orders such as Executive Order Number 12898 (Environmental Justice) reinforce this SDWA requirement and are specifically designed to ensure that disadvantaged communities are not protected at levels that are less than those afforded nationally. Thus, EPA disagrees with the suggestion that the level of the final standard be altered to address local or regional considerations, or otherwise tailored, except as specifically provided for by SDWA.

4. Standard for Total Arsenic vs. Species-Specific Standards

Several commenters expressed concern that an arsenic in drinking water standard based on total arsenic may unfairly penalize many drinking water systems, since these commenters felt that only inorganic forms of arsenic are considered to be toxic. Thus, the argument goes: the portion of a compliance sample that is comprised of organic arsenic would unfairly ''count against'' the utility when determining whether or not the concentration of arsenic in the sample exceeds the MCL. EPA believes, based on our understanding of occurrence patterns of arsenic, that source waters overwhelmingly contain inorganic arsenic. However, EPA also believes that there is a recent body of scientific evidence that indicates organic arsenic may also be toxic. Thus, it is important to know the total amount of arsenic present—both inorganic and organic.

Allowing for only the relative concentration of inorganic arsenic to be measured in compliance samples would impose an additional expense and would only account for a portion of the potentially toxic arsenic present. EPA does not believe such an approach is appropriate for the reasons discussed and instead believes the final MCL should be expressed as total arsenic.

J. Health Risk Reduction and Cost Analysis (HRRCA)

1. Notice and Comment Requirement

Several commenters stated that EPA was required to publish the HRRCA for public comment prior to proposing the arsenic regulation. EPA respectfully disagrees with these commenters. SDWA section 1412(b)(3)(C) states that ''when proposing any national primary drinking water regulation that includes a maximum contaminant level, the Administrator shall, with respect to a maximum contaminant level that is being considered in accordance with paragraph (4) and each alternative maximum contaminant level that is being considered pursuant to paragraph (5) or (6)(A), publish, and seek comment on, and use for purposes of paragraphs (4), (5), and (6) an analysis of * * *'' the quantifiable and nonquantifiable health risk reduction benefits, the quantifiable and nonquantifiable health risk reduction benefits from reducing co-occurring contaminants, the quantifiable and nonquantifiable costs, the incremental costs and benefits, the effects of the contaminant on the general population as well as on any sensitive subpopulations, any possible increased health risks, and uncertainties in the analysis of any of the above factors.

The above section of the statute provides for the publication of the HRRCA for any contaminant, except radon in drinking water, concurrently with the proposed regulation. Had Congress intended for the arsenic HRRCA to be published in advance of the proposal, the statute would have specifically provided for that, as it did in the case of radon. Section 1412(b)(13)(C) refers to the specific requirements for radon in drinking water. In this section of the statute, Congress required the Agency to publish the HRRCA for radon in drinking water six months in advance of the proposal.

In the proposed arsenic rule, the Agency provided an analysis of the costs, benefits, and other HRRCA requirements, which was shown in Section XIII of the preamble to the proposed rule. The public was provided a 90-day comment period in which to submit comments on all aspects of the proposed rule, including costs, benefits, and HRRCA requirements.

2. Conformance With SDWA Requirements

Some commenters felt that EPA did not meet the statutory requirements for conducting a HRRCA in section 1412(b)(3)(C)(i) and did not analyze the incremental costs and benefits associated with each alternative maximum contaminant level considered in conformance with SDWA requirements. EPA has met these requirements by conducting a HRRCA and an incremental analysis which are described in section XIII.D. of the preamble for the proposed rule. The HRRCA requirements, incremental costs, and incremental benefits are also discussed in the Economic Analysis of the proposed rule.

Some commenters also noted that EPA's incremental cost-benefit analysis lacked significant detail. The Agency addressed these concerns by adding more text to the incremental analysis section in the preamble for the final rule.

Several other commenters stated that the proper interpretation of SDWA is to use only an incremental analysis to determine if the benefits justify the costs. EPA respectfully disagrees with this interpretation because section 1412(b)(4)(C) of SDWA states ''* * * the Administrator shall publish a

determination as to whether the benefits of the maximum contaminant level justify, or do not justify, the costs based on the analysis conducted under paragraph (3)(C).'' Paragraph (3)(C) contains the description of the seven Health Risk Reduction and Cost Analysis elements that the Agency must consider. These seven elements include quantifiable and nonquantifiable health risk reduction benefits, quantifiable and nonquantifiable health risk reduction benefits from reducing co-occurring contaminants, quantifiable and nonquantifiable costs, incremental costs and benefits, effects of the contaminant on the general population as well as on any sensitive subpopulations, possible increased health risks, and uncertainties in the analysis of any of these elements. The Agency must consider all seven elements, not just incremental benefits and costs, when making a determination as to whether the benefits of the proposed rule justify the costs.

VI. Administrative and Other Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or;
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it will have annual costs of more than $100 million. As such, this action was reviewed by OMB. Changes made in response to OMB suggestions or recommendations are documented in the public record. EPA prepared an Economic Analysis (EA) pursuant to Executive Order 12866 and a revised version of the EA is in the docket for this rule (EPA, 2000o).

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. 601(3)–(5).) In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's rule on small entities, EPA considered small entities to be PWSs serving fewer than 10,000 persons. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested comment, consulted with the SBA, and finalized the alternative definition in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this regulation as well.

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities in accordance with section 609(b) of the RFA. A detailed discussion of the Panel's advice and recommendations is found in the Panel Report (EPA 1999e). A summary of the Panel's recommendations is presented at (65 FR 38963, June 22, 2000). All Panel's recommendations directly applicable to this rulemaking are included in this final rule.

As required by section 604 of the RFA, EPA also prepared a final regulatory flexibility analysis (FRFA) for today's final rule. The FRFA in combination with today's preamble, addresses the issues raised by public comments on the IRFA, which was part of the proposal of this rule. The FRFA is available for review in the docket, (EPA 2000w) and is summarized below.

The RFA requires EPA to address the following when completing an FRFA:

(1) A succinct statement of the need for, and objectives of, the rule;

(2) A summary of the significant issues raised by the public comments on the IRFA, a summary of the assessment of those issues, and a statement of any changes made to the proposed rule as a result of those comments;

(3) A description of the reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the rule and the type of professional skills needed to prepare the report or record;

(4) A description of the types and number of small entities to which the rule will apply, or an explanation why no estimate is available; and

(5) a description of the steps taken to minimize the significant impact on small entities consistent with the stated objectives of the applicable statutes, including a statement of the factual, policy, and legal reasons why EPA selected the alternative the final rule and why the other significant alternatives to the rule that were considered which affect the impact on small entities were rejected.

The following is a summary of the FRFA. The first requirement is discussed in section II. and III.D.1 of this preamble. The second, third, fourth and fifth requirements are summarized as follows.

a. *Comments on the IRFA.* Commenters on the IRFA raised a number of issues, largely concerned with the potential cost of the rule. In the proposed arsenic rule and the RIA supporting the proposal (EPA 2000h), EPA estimated the costs for small systems for the four arsenic MCL regulatory options and requested comment on the IRFA. Some commenters felt that EPA had underestimated the costs for small systems to comply with the arsenic proposal. In response to the comments, the Agency re-evaluated the economic effects on small entities after publication of the proposal (as discussed in greater detail in Section III.). EPA updated its assessment for the FRFA based on comments and the final regulatory decisions, *i.e.*, the final MCL level, full coverage of NTNCWS, and updated costs of compliance, including waste disposal costs.

b. Reporting, Recordkeeping and Other Requirements for Small Systems. The arsenic rule continues to require small systems to maintain records and to report arsenic concentration levels at the point-of-entry to the water system's distribution system. NTNCWSs are added to the systems that must meet the MCL for arsenic by this rulemaking. Small systems are also required to provide arsenic information in the Consumer Confidence Report or other public notification if the system exceeds specific arsenic finished water concentrations including the MCL. Arsenic monitoring and reporting will be required annually for surface water (and mixed surface and ground water systems) or once every three years for ground water systems, unless the small system obtains a monitoring waiver from the State, demonstrating compliance with the proposed MCL. Other existing information and reporting requirements, such as Consumer Confidence Reports and public notification requirements, will be revised to include the lower arsenic MCL and a reporting requirement when one half of the MCL is exceeded (see section V.E.). As is the case for other contaminants, required information on system arsenic levels must be provided by affected systems and is not considered to be confidential. The professional skills necessary for preparing the reports are the same skill level required by small systems for current reporting and monitoring requirements for other drinking water standards.

The classes of small entities that are subject to the proposed arsenic rule include public water systems serving less than 10,000 people.

c. Number of Small Entities Affected. The number of small entities subject to today's rule is shown in Table VI.B–1 below.

TABLE VI.B–1.—PROFILE OF THE UNIVERSE OF SMALL WATER SYSTEMS REGULATED UNDER THE ARSENIC RULE

Water system type	System size category				
	<100	101–500	501–1,000	1,001–3,300	3,301–10,000
Publicly-Owned:					
CWS	1,729	5,795	3,785	6,179	3,649
NCWS	1,783	3,171	1,182	361	29
Privately-Owned:					
CWS	13,640	11,266	2,124	1,955	654
NCWS	8,178	4,162	902	411	56
Total Systems:					
CWS	15,369	17,061	5,909	8,134	4,303
NCWS	9,961	7,333	2,084	772	85
Total	25,330	24,394	7,993	8,906	4,388

Source: Safe Drinking Water Information System (SDWIS), December 1998 freeze.

EPA's FRFA estimates that the economic impact of the final rule will not be significant for the vast majority of small systems. Of the 71,011 small entities potentially affected by the Arsenic Rule, 94% are expected to incur average annualized costs of less than $40. This average reflects total costs for systems that will not need to modify or install treatment to meet the MCL and mostly reflects monitoring costs. This equates to approximately 0.001% of average annual revenue. The remaining 6%, 3,907 systems, estimated to need additional or modified treatment to meet the MCL are expected to incur average annualized costs of approximately $20,816, or 0.70% of average annual revenue. Although EPA has worked with small communities to minimize the burden of compliance with this rule, the Agency anticipates that several hundred systems may nevertheless experience costs in excess of 3% of annual revenues. As noted below, financial assistance and exemptions (providing additional time) are available for small systems for compliance.

d. Minimizing small system impact and the final MCL. As discussed in more detail in section I.L. of this preamble, EPA notes that $1.7 billion is available each year through the SRF and RUS program to support necessary capital improvements to ensure compliance. SDWA also provides small systems additional time to comply through a provision for exemptions. Systems serving fewer than 3,300 persons can apply for an exemption from the State (SDWA section 1416(b)(3)) that can provide up to an additional nine years to comply (for a total of 14 years from the effective date of the rule). EPA discusses in section III.F. of this preamble the decisions to select the final MCL. EPA is preparing a small entity compliance guide to help small entities comply with this rule as required by Section 212 of SBREFA. This guide will be available for small systems within a few months of the promulgation date of this rule. Small systems may obtain a copy of the guide from EPA's web site, www.epa.gov/safewater.

C. Unfunded Mandates Reform Act (UMRA) of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a benefit-cost analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must

have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year. A detailed description of this analysis is presented in EPA's Economic Analysis of the arsenic rule (EPA, 2000o) which is included in the Office of Water docket for this rule. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below.

a. Authorizing legislation. Today's rule is issued pursuant to section 1412(b)(13) of the 1996 amendments to SDWA that requires EPA to propose and promulgate a national primary drinking water regulation for arsenic, establishes a statutory deadline of January 1, 2000, to propose this rule, and establishes a statutory deadline of January 1, 2001, (and subsequently amended to June 22, 2001) to promulgate this rule.

b. Cost-benefit analysis. Section III. of this preamble, describing the Economic Analysis (EA) (EPA, 2000o), health risk analysis and the cost and benefit analysis for arsenic, contains a detailed analysis in support of the arsenic rule. Today's final rule is expected to have a total annualized cost of approximately $181 million (Exhibit 6–9, EPA, 2000o). This total annualized cost includes the total annual administrative costs of State, Tribal, and local governments, in aggregate, less than 1% of the cost, and total annual treatment, monitoring, reporting, and record keeping impacts on public water systems, in aggregate, of approximately $1.3 million. EPA estimates the total annual costs of administrative activities for compliance with the MCL to be approximately $2.7 million.

The EA includes both qualitative and monetized benefits for improvements in health and safety. EPA estimates the final arsenic rule will have total annual monetized benefits for bladder and lung cancer of approximately $140 to 198 million for the MCL of 10 μg/L. The monetized health benefits of reducing arsenic exposures in drinking water are attributable to the reduced incidence of fatal and non-fatal bladder and lung cancers. At an arsenic level of 10 μg/L, an estimated 21 to 30 fatal bladder and lung cancers and 12 to 26 non-fatal bladder and lung cancers per year are prevented.

In addition to quantifiable benefits, EPA has identified several potential non-quantifiable benefits associated with reducing arsenic exposures in drinking water. These potential benefits include health effects that are difficult to quantify because of the uncertainty surrounding their estimation. Non-quantifiable benefits may also include any peace-of-mind benefits specific to reduction of arsenic risks that may not be adequately captured in the Value of Statistical Life (VSL) estimate.

c. Financial Assistance. Section III of this preamble describes the various Federal programs available to provide financial assistance to State, Tribal, and local governments to administer and comply with this and other drinking water rules. The Federal government provides funding to States that have a primary enforcement responsibility for their drinking water programs through the Public Water Systems Supervision (PWSS) Grant program. Additional funding is available from other programs administered either by EPA or other Federal agencies. These include the Drinking Water State Revolving Fund (DWSRF) and Housing and Urban Development's Community Development Block Grant Program. Also, the Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA) operates a Water and Waste Disposal Loan and Grant Program. This program provides low-interest loans and grants to public entities and not-for-profit corporations serving populations of 10,000 or fewer persons.

d. Estimates of future compliance costs and disproportionate budgetary effects. To meet the requirement in section 202 of the UMRA, EPA analyzed future compliance costs and possible disproportionate budgetary effects of an arsenic MCL of 10 μg/L to the extent reasonably feasible. The Agency believes that the cost estimates, indicated previously and discussed in more detail in section III of today's rule, accurately characterize future compliance costs of the rule.

With regard to the disproportionate impacts, EPA considered available data sources in analyzing the disproportionate impacts upon geographic or social segments of the nation or industry. While the percentage of systems impacted varies from region to region, no area has impacts substantial enough to create a disproportionate burden. For the proposal, EPA did identify (Table V–2, p. 38908) that there are a larger percentage of systems in the Western and New England regions, whose drinking water quality currently would exceed the MCL for arsenic. For such regions, total compliance, therefore, may be incrementally costlier than for systems in regions where a smaller percentage currently exceed the arsenic MCL. However, even this difference is not considered by EPA to represent a disproportionate impact.

To estimate the potential disproportionate impacts on social segments of this rule, this analysis also developed three other measures:

(1) Reviewing the impacts on small versus large CWSs;

(2) Reviewing the costs to public versus private CWSs; and

(3) reviewing the household costs for the rule.

Table 6–11 of the EA (EPA, 2000o) shows that the total treatment costs for small CWSs (serving fewer than 10,000 persons) is less than the total treatment for large CWSs; therefore, there is no disproportionate impact on small systems versus large systems. Table 8–29 of the EA shows that there is not a disproportionate impact when comparing costs for public CWSs to costs for private CWSs of the same size. Public systems have slightly higher costs than public CWSs. Table 8–30 of the EA show household costs by system size. Cost per household increases as system size decreases. Cost per household is higher for households served by smaller systems than larger systems. These values are expected for two reasons. First, smaller systems serve far fewer households than larger systems and, consequently, each household must bear a greater percentage share of the system's costs. Second, smaller systems tend to have higher influent arsenic concentrations that, on a per-capita or per-household basis, require more expensive treatment methods to achieve the target arsenic level.

Moreover, even if there were a disproportionate impact associated with the final MCL, EPA does not have any authority to tailor the regulation to provide regional or ownership relief. Finally, as previously noted, EPA adopted a 10 μg/L arsenic MCL rather than the proposed (5 μ/L) or feasible level (3 μg/L) of arsenic MCL in part because of the benefit cost issues raised by commenters. This should serve to mitigate the costs of the rule to some degree. EPA also provided delayed compliance deadlines for all systems

which should also reduce the economic effect on systems with higher ground water arsenic levels.

EPA will prepare a small entity compliance guide, a monitoring/analytical manual, and a small systems technology manual that will assist the public and private sector.

e. Macroeconomic effects. As required under UMRA § 202, EPA is required to estimate the potential macro-economic effects of the regulation. These types of effects include those on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25% to 0.5% of Gross Domestic Product (GDP). In 1998, real GDP was $7,552 billion so a rule would have to cost at least $18 billion annually to have a measurable effect. A regulation with a smaller aggregate effect is unlikely to have any measurable impact unless it is highly focused on a particular geographic region or economic sector. The macro-economic effects on the national economy from the arsenic rule should be negligible based on the fact that, assuming 100% compliance, the total annual costs are approximately $181 million, and the costs are not expected to be highly focused on a particular geographic region or industry sector.

f. Summary of EPA's consultation with State, Tribal, and local governments. In developing the proposed rule, EPA consulted with small governments pursuant to its plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. Consistent with the intergovernmental consultation provisions of section 204 of UMRA, EPA held, prior to proposal, consultations with the governmental entities affected by this rule. EPA held four public meetings for stakeholders prior to proposal and an additional meeting after proposal. The Agency convened a Small Business Advocacy Review (SBAR) Panel in accordance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address small entity concerns, including small local governments. EPA consulted with small entity representatives prior to convening the Panel to get their input on the arsenic rule. Two of the small entities represented small governments. A detailed description of the SBREFA process can be found in the docket of this rulemaking (EPA, 1999e). EPA also made presentations at Tribal meetings in Nevada, Alaska, and California. In addition, EPA made presentations at meetings of the American Water Works Association (AWWA), the Association of State Drinking Water Administrators (ASDWA), the Association of California Water Agencies (ACWA), and the Association of Metropolitan Water Agencies (AMWA). Participants in EPA's stakeholder meetings also included representatives from the National Rural Water Association, AMWA, ASDWA, AWWA, ACWA, Rural Community Assistance Program, State departments of environmental protection, State health departments, State drinking water programs, and a Tribe.

g. Nature of State, Tribal, and local government concerns and how EPA addressed these concerns. In general, comments on the proposed UMRA discussion continued to cite costs and funding for compliance as concerns. EPA has further revised the costs for this final rule based on comments and continues to believe that there are affordable technologies (see section III.E.). Cost was one of the issues EPA considered in deciding to exercise its discretionary authority under section 1412(b)(6) of SDWA to propose that the MCL be set a level higher than the feasible level in the proposed rule of 5 μg/L and to set the final level of 10 μg/L. Commenters asked that funding be increased to the Drinking Water State Revolving Fund (DWSRF) or somehow fully fund compliance with the proposed requirements. While the DWSRF program is proving to be a significant source of funding, it cannot be viewed as the only source of funding. There are strategies other than Federal funding (such as system bundling) for meeting the arsenic rule. Federal, State and local governments, private business and utilities will need to work in partnership to help address the significant infrastructure needs for complying with today's rule.

h. Regulatory alternatives considered. As required under section 205 of the UMRA, EPA considered several regulatory alternatives in developing an MCL for arsenic in drinking water. In preparation for this consideration, the Regulatory Impact Analysis (EPA, 2000h) and Health Risk Reduction and Cost Analysis (HRRCA) for the proposed arsenic rule (EPA, 2000i, see section XIII.) evaluated arsenic levels of 3 μg/L, 5 μg/L, 10 μg/L, and 20 μg/L. (see section III. of the proposed rule for more discussion of the regulatory alternatives considered.)

i. Selection of the regulatory alternative. As explained in section III.F. of today's preamble, the Agency selected an MCL of 10 μg/L which is the most cost-effective alternative since it maximizes benefits.

D. Paperwork Reduction Act (PRA)

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*, and has assigned OMB control number 2040–0231.

Under this rule, respondents to the monitoring, reporting, and recordkeeping requirements include the owners and operators of community water systems and State officials that must report data to the Agency. Monitoring for arsenic is required at each entry point to the distribution system. States will have discretion in grandfathering existing data for determining initial monitoring baselines for the currently regulated contaminants.

EPA has estimated the burden associated with the specific information collection, record keeping and reporting requirements of the proposed rule in the accompanying Information Collection Request (ICR). The ICR for today's final rule compares the current requirements to the revised requirements for information collection, reporting and record-keeping. The States and the PWSs must perform start-up activities in preparing to comply with the arsenic rule. Start-up activities include reading the final rule to become familiar with the requirements and training staff to perform the required activities.

For PWSs, the number of hours required to perform each activity may vary by system size. This rule applies to community water systems and non-transient non-community water systems. There are approximately 74,607 PWSs and 56 States and territories considered in this ICR. During the first three years after promulgation of this rule, the average burden hours per respondent per year is estimated to be 8 hours for PWSs and 915 hours for States. During this period, the total burden hour per year for the approximately 74,663 respondents covered by this rule is estimated to be 667,179 hours to prepare to comply with this final arsenic rule. The average number of responses per year by PWSs is 49,738. The average number of responses for the States is expected to be 75 per year during the first three-year period. The average burden hours per response for PWSs is 4. The average burden hours per response for States is 229. Total annual labor costs during this first 3-year period are expected to be

about $9.9 million per year for PWSs. The information collected is not confidential.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to collect information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in Chapter 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

E. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Pub. L. No. 104–113, section12(d), 15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide to Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule does not establish any technical standards; thus, NTTAA does not apply to this rule. However, it should be noted that systems complying with this rule need to use previously approved technical standards already included in § 141.23. As discussed in the proposed rule for arsenic (65 FR 38888) and in today's final rule (section I.F.1.), one consensus method (SM 3120B) and one EPA method (EPA 200.7), are withdrawn by this rule because the method detection limits for these methods are inadequate to reliably determine the presence of arsenic at the MCL of 10 μg/L. After the removal of these methods, the four remaining analytical methods currently approved for compliance monitoring of arsenic in drinking water are published by consensus organizations. The four methods published by these consensus organizations include SM 3113B, SM 3114B, ASTM 2972–93B and ASTM 2972–93C. These methods are described in the ''Annual Book of ASTM Standards'' (American Society for Testing and Materials, 1994 and 1996) and in ''Standards for the Examination of Water and Wastewater'' (APHA, 1992 and 1995).

F. Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agencies' missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders.

On March 12, 1998, the Agency held a stakeholder meeting to address various components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, Tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call between 11 cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's drinking water programs. The major objectives for the March 12, 1998 meeting were:

- Solicit ideas from stakeholders on known issues concerning current drinking water regulatory efforts;
- Identify key issues of concern to stakeholders, and;
- Receive suggestions from stakeholders concerning ways to increase representation of communities in EPA regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks,'' (62 FR 19885 April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, imposes substantial direct compliance costs, and is not required by statute (unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation). EPA also may not issue a regulation that has federalism implications and preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management

and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has concluded that this rule will have federalism implications. This rule will impose substantial direct compliance costs on State and local governments, and the Federal government will not provide the funds necessary to pay those costs. Accordingly, EPA provides the following FSIS as required by section 6(b) of Executive Order 13132.

EPA consulted with State and local officials early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. Summaries of the meetings have been included in the docket for this proposed rulemaking. EPA consulted extensively with State, Tribal, and local governments. For example, EPA held four public stakeholder meetings in Washington, D.C. (two meetings); San Antonio, Texas; and Monterey, California. An additional public stakeholder meeting was held after the proposal was published in Reno, Nevada. A summary of this meeting is included in the docket of this rulemaking. Invitations to stakeholder meetings were extended to the National Association of Counties, The National Governors' Association, the National Association of Towns and Townships, the National League of Cities, and the National Conference of State Legislators. In addition, several elected officials were part of the Small Business Advocacy Review Panel convened by EPA (as required by section 609(b) of the Regulatory Flexibility Act). EPA officials presented a summary of the rule to the National Governor's Association in a meeting on May 24, 2000. In addition, EPA scheduled a one-day stakeholders' meeting for the trade associations that represent elected officials on May 30, 2000 to discuss and solicit comment on this and other upcoming contaminant rules.

Several issues were raised by stakeholders (including elected officials) regarding the arsenic rule provisions, most of which were related to reducing burden and maintaining flexibility. The Office of Water was able to reduce burden and increase flexibility for the proposal in a number of areas in response to these comments (see section XIV.G. of the proposed rule).

Commenters on the proposed rule continued to request a reduction of burden and increased flexibility as well as to question the need for the rule. Section V. of this preamble and the Comment Response Document (EPA, 2000u) discuss the comments and EPA's response in detail. The Agency exercised its discretionary authority under section 1412(b)(6) of SDWA to propose that the MCL be set at a level higher than the feasible level in the proposed rule and, in the final rule, to move from the proposed level of 5 μg/L to 10 μg/L.

I. Executive Orders 13084 and 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13984.

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' 63 FR 27655 (May 19, 1998), EPA may not issue a regulation that: is not required by statute, significantly or uniquely affects the communities of Indian Tribal governments, and 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 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.''

EPA has concluded that this rule may significantly or uniquely affect communities of Indian tribal governments. It may also impose substantial direct compliance costs on such communities, and the Federal government will not provide the funds necessary to pay the direct costs incurred by the Tribal governments in complying with this rule. In developing the rule, EPA consulted with Tribal governments to permit them to have meaningful and timely input into its development.

In order to inform and involve Tribal governments prior to proposing the arsenic rule, EPA staff attended the 16th Annual Consumer Conference of the National Indian Health Board on October 6–8, 1998, convened a Tribal consultation meeting on February 24–25, 1999, and conducted a series of workshops at the Annual Conference of the National Tribal Environmental Council on May 18–20, 1999. Tribal representatives were generally supportive of an arsenic standard that ensures a high level of water quality, but raised concerns over funding for regulations. With regard to the proposed arsenic rule, many Tribal representatives saw the health benefits as highly desirable, but felt that unless additional funds were made available, implementing the regulation would be difficult for many Tribes. Comments submitted on the proposed arsenic rule repeated the concern that Tribes might not be able to afford to meet the arsenic requirements.

The Agency believes that the requirements of this final rulemaking are affordable nationally, including Tribal PWSs. As discussed in section I.G. of this preamble, EPA has developed and applied a national affordability criterion to the projected costs of compliance of this rule for small systems (those serving less than 10,000 persons). Using this approach, EPA has identified affordable compliance technologies that small systems (including Tribal PWSs) may use to comply with today's final rule.

J. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998 require each agency to write its rules in plain language. Readable regulations help the public find requirements quickly and understand

them easily. They increase compliance, strengthen enforcement, and decrease mistakes, frustration, phone calls, appeals, and distrust of government. Of the several techniques typically utilized for writing readably, using a question and answer format, and using the word, ''you'' for whoever must comply, do the most to improve the look and sound of a regulation. The preamble for today's final rule uses the first principle and was developed using a plain language question and answer format. Today's final rule language does not use these principles since the rule only modifies or adds to existing regulatory language that is in the previous regulatory language format. EPA received comments on the use of plain language. Commenters suggested that the Agency had not clearly explained certain terms for example, ''dose-response'' and ''parts per billion.'' The comments were centered around technical and scientific issues and terms that are often difficult to discuss in a plain language format. EPA considered these comments in writing the section of this final rule to which those comment apply. EPA made every effort to write this preamble to the final rule in as clear, concise, and unambiguous manner as possible.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective March 23, 2001.

L. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of SDWA, the Agency discussed or submitted possible arsenic rule requirements to the Science Advisory Board (SAB), National Drinking Water Advisory Council (NDWAC), and to the Secretary of Health and Human Services and requested comment from the Science Advisory Board (SAB) on the arsenic rule.

On March 13th and 14th, 2000 in Washington DC, the Agency met with the Science Advisory Board during meetings open to the public where several of the Agency's Drinking Water Rules were discussed. A copy of the SAB's comments may be found in the docket. SAB provided substantive comments on the proposed arsenic rule which are discussed in sections V.B. and V.F. of this preamble.

In addition, the National Drinking Water Advisory Council was consulted on this rulemaking on several occasions throughout the rule's development (*e.g.,* November 1999 in Baltimore, Maryland; April 2000 in San Francisco, CA; November 2000 in Arlington, VA). The summary of the deliberations and recommendations of the Council may be found in the docket for this rule.

The Agency coordinated with the Department of Health and Human Services in several ways. Representatives of the Centers for Disease Control and Prevention (CDC), the Agency for Toxic Substances and Disease Registry (ATSDR), and the Food and Drug Administration (FDA) were invited to the Agency's stakeholder meetings on the arsenic rulemaking and on the mailing list for updates. We provided FDA staff with summaries of the meetings, meeting materials, and a briefing paper. In addition, the Agency maintained contact with CDC representatives on the status of CDC-funded research on skin adsorption that could have a bearing on the Agency's deliberations. EPA commented on and monitored the progress of the updated ''Toxicological Profile for Arsenic'' issued by ATSDR. Finally, we provided ongoing progress reports on the Agency's arsenic in drinking water rulemaking activities to representatives of FDA relative to the timing of bottled water regulations that need to follow the promulgation of the Agency's final rule.

M. Likely Effect of Compliance With the Arsenic Rule on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of SDWA as amended requires that, in promulgating a NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. The following summarizes the analysis performed to fulfill this statutory obligation. (EPA, 2000v)

Overall water system capacity is defined in guidance (EPA, 1998g) as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity has three components: technical, managerial, and financial. Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. Technical capacity refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. Managerial capacity is the ability of a water system to conduct its affairs in a manner enabling the system to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities. Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements.

The arsenic rule establishes five requirements that may impact the TMF capacity of PWSs:

(1) Compliance with MCL revised to 10 μg/L from 50 μg/L (40 CFR 141.62);

(2) Revised arsenic monitoring schedule [(modified to join the standard monitoring framework (SMF) used for other inorganic contaminants (IOCs)] (§ 141.23(c))—includes requirement for public notification of MCL exceedance, but not Consumer Confidence Report (CCR) requirements (§ 141.154);

(3) New source monitoring (§ 141.24);

(4) Removal of EPA Method 200.7 and SM 3120 from list of approved analytical methods to demonstrate compliance (§ 141.23); and

(5) Inclusion of arsenic health effects language in CCRs (§ 141.154).

The arsenic rule applies to all CWSs (54,370 systems) and NTNCWSs (20,255 systems)—74,625 systems in all (EPA, 2000b). However, many systems will not be affected by the new arsenic requirements. Table VI.M–1 provides a complete listing of the requirements and a description of the type and number of systems affected by each requirement.

TABLE VI.M–1.—REQUIREMENTS OF THE ARSENIC RULE AND NUMBER OF SYSTEMS AFFECTED

Requirement	Affected systems [1]			
	Description	Number		
		CWSs	NTNCWSs	Total
Compliance with revised MCL (10 μg/L)	Systems with As ≥ 10 μg/L	3,024	1,080	4,104
Revised monitoring schedule	CWSs with As between 3 μg/L (PQL) and 50 μg/L and all NTNCWSs.	10,590	20,255	30,845
New source monitoring	Systems that develop a new source to meet the revised MCL.	~0	~ 0	<100
Removal of specified analytical methods	All CWSs that currently use banned methods.	<100	N/A	<100
Inclusion of health effects language in CCR	CWSs with As ≥5–25 μg/L	~4,000	N/A	~4,000

[1] Estimates derive from actual system impacts projected in cost benefit analysis. Will differ from system-level figures discussed earlier in preamble. Reflect all systems having impacts, including those partially impacted.

Those systems whose current source(s) will not meet the revised MCL must either develop a new source, install new treatment processes, or enhance their existing treatment processes. (The impact of developing a new source are included in the analysis of the new source requirement.) The installation, operation, and maintenance of new treatment technologies will require a substantial enhancement of these systems' technical capacity. Specifically, source water adequacy will be reduced (marginal sources may no longer be viable), the system will be required to greatly enhance its infrastructure (particularly its treatment processes) to meet the technical challenge posed by the revised MCL, and system operators will require correspondingly greater technical expertise to successfully operate new and more advanced treatment processes.

The impacts to the managerial capacity of systems affected by the revised arsenic MCL are not anticipated to be as great as the technical and financial challenges. Nonetheless, many system managers will need to review the implications of the revised MCL and may need to hire a more highly certified operator or provide additional training for the existing operator.

In addition, systems will need to rely upon and improve their interactions with the service community and technical/financial assistance providers. System management will need to explain the following issues: (1) The reason why the arsenic standard was revised, (2) the safety of the water that the system provides, and (3) the reason for new or higher fees. These activities are in addition to the inclusion of the health effects language in the CCR and therefore will impact the managerial capacity of a system.

The impacts of the arsenic rule requirements to the technical capacity of systems are closely tied to financial impacts. Systems that must install additional treatment processes or upgrade their current treatment processes may face significant costs. These costs may be especially difficult for many of the affected systems to absorb since many of them are relatively small (i.e., serving less than 3,300 customers), and therefore typically have a smaller revenue base and fewer households over which they may distribute the additional costs. The rule specifically allows the use of centrally managed POU-treatment devices to achieve compliance with the revised arsenic MCL. However, the installation, operation, maintenance, and management of these devices still represents a substantial expense for small systems.

To obtain funding from either public or private sources, systems will need to demonstrate sound financial accounting and budgeting practices, and the ability to repay their debts. As a result, many of the smallest systems that do not currently charge explicitly for water service (e.g., mobile home parks, camp grounds, etc.) may need to begin to bill their customers. Those systems that already charge for water service will likely need to increase their rates (sometimes requiring approval of the local public utilities commission (PUC)), and improve their recordkeeping procedures.

EPA anticipates that the revised monitoring and reporting framework will have a relatively limited impact on system capacity even though some CWSs will no longer be eligible for reduced monitoring and others will no longer be able to composite. NTNCWSs will be required to monitor for arsenic for the first time. To comply with this requirement system management will need to ensure that staff understand the new requirements, that monitoring records are properly maintained, and that the appropriate reports are provided to the State primacy agency and EPA. In addition, systems will face a slight increase in monitoring costs that may require systems to adjust their budgeting practices and fee structures. Nonetheless, since most systems are already familiar with the SMF for IOCs, the impact to capacity is minimal.

There will be a substantial impact on capacity for those systems that must develop a new source to meet the revised MCL. In addition to the monitoring requirements specified in the arsenic proposal, these systems will expend substantial effort and money to ensure that their new source(s) will consistently provide reliable production of high quality water.

Removing two currently approved analytical methods should not have a large impact on system capacity. Since similarly priced alternative methods are available, it was estimated that there would be little to no impact to the managerial and financial capacity of systems that currently rely on this method (or whose laboratory relies on this method). A system may need to ensure that the systems' laboratory uses an approved method and may need to ensure that the operator is aware of the change in approved analytical methods.

The requirement for affected systems (those with arsenic levels above half the revised MCL) to immediately begin incorporating health affects language into their CCRs will principally impact the managerial capacity of systems. Specifically, systems will need to: (1) incorporate information about arsenic into their CCRs; (2) explain to the service community the reason why they are including such information; (3)

explain the health implications of current arsenic levels; and potentially, (4) explain how the system anticipates meeting the revised MCL. Moreover, affected systems will also need to prepare to respond to customer queries regarding the new arsenic information and the system's compliance status.

The arsenic rule will have a substantial impact on the capacity of the 4,100 CWSs and NTNCWSs that must reduce arsenic levels or develop new sources to meet the revised MCL. However, while the impact to these systems is significant, only five percent of all systems regulated under the Arsenic Rule (4,104 of 74,625) will be affected by this requirement. The new monitoring and reporting requirements, removal of approved analytical methods, and inclusion of health effects language in the CCR are expected to impact the capacity of approximately an additional 26,000 systems to a small degree. About 31,000 systems (i.e., 40% of regulated systems) are expected to experience minimal impact on their capacity as a result of the arsenic rule.

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List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indian lands, Incorporation by reference, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indian lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: January 16, 2001.

Carol M. Browner,

Administrator.

For reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR parts 9, 141 and 142 as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326–1330, 1324, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Amend the table in § 9.1 by removing the entry for 141.23–141.24 and adding new entries for 141.23(a)–(b), 141.23 (c), and 141.23(d)–141.24 to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Prmary Drinking Water Regulations	
* * * * *	
141.23A(a)–(b)	2040–0090
141.23(c)	2040–0231
141.23(d)–141.24	2040–0090
* * * * *	

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart A—[Amended]

§ 141.2 [Amended]

2. In 40 CFR 141.2 revise the definition heading for ''*Point-of-entry treatment device*'' to read ''*Point-of-entry treatment device (POE)*'', and revise the definition heading for ''*Point-of-use treatment device*'' to read ''*Point-of-use treatment device (POU)*''.

3. Amend § 141.6 by revising paragraphs (a) and (c), and adding paragraphs (j) and (k) to read as follows:

§ 141.6 Effective dates.

(a) Except as provided in paragraphs (b) through (k) of this section, and in § 141.80(a)(2), the regulations set forth in this part shall take effect on June 24, 1977.

* * * * *

(c) The regulations set forth in §§ 141.11(d); 141.21(a), (c) and (i); 141.22(a) and (e); 141.23(a)(3) and (a)(4); 141.23(f); 141.24(e) and (f); 141.25(e); 141.27(a); 141.28(a) and (b); 141.31(a), (d) and (e); 141.32(b)(3); and 141.32(d) shall take effect immediately upon promulgation.

* * * * *

(j) The arsenic maximum contaminant levels (MCL) listed in § 141.62 is effective for the purpose of compliance on January 23, 2006.

Requirements relating to arsenic set forth in §§ 141.23(i)(4), 141.23(k)(3) introductory text, 141.23(k)(3)(ii), 141.51(b), 141.62(b), 141.62(b)(16), 141.62(c), 141.62(d), and 142.62(b) revisions in Appendix A of subpart O for the consumer confidence rule, and Appendices A and B of subpart Q for the public notification rule are effective for the purpose of compliance on January 23, 2006. However, the consumer confidence rule reporting requirements relating to arsenic listed in § 141.154(b) and (f) are effective for the purpose of compliance on March 23, 2001.

(k) Regulations set forth in §§ 141.23(i)(1), 141.23(i)(2), 141.24(f)(15), 141.24(f)(22), 141.24(h)(11), 141.24(h)(20), 142.16(e), 142.16(j), and 142.16(k) are effective for the purpose of compliance on January 22, 2004.

Subpart B—[Amended]

4. Amend § 141.11 by revising the second sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 141.11 Maximum contaminant levels for inorganic chemicals.

(a) * * * The analyses and determination of compliance with the 0.05 milligrams per liter maximum contaminant level for arsenic use the requirements of § 141.23.

(b) The maximum contaminant level for arsenic is 0.05 milligrams per liter for community water systems until January 23, 2006.

* * * * *

Subpart C—[Amended]

5. Amend § 141.23 by:

a. Adding a new entry for ''Arsenic'' in alphabetical order to the table in paragraph (a)(4)(i) and adding endnotes 6, 7 and 8,

b. Revising paragraphs (a)(5) and (c) introductory text,

c. Adding paragraph (c)(9),

d. Revising paragraphs (f)(1), (i)(1), and (i)(2),

e.–h. Adding paragraph (i)(4),

i. Revising the entries for arsenic in the table in paragraph (k)(1),

j. Revising paragraph (k)(2) introductory text,

k. Adding a new entry for ''Arsenic'' in alphabetical order to the table to paragraph (k)(2) and revising footnote 1,

l. Revising the last sentence in paragraph (k)(3) introductory text, and

m. Adding a new entry for ''Arsenic'' in alphabetical order to the table in paragraph (k)(3)(ii).

The revisions and additions read as follows:

§ 141.23 Inorganic chemical sampling and analytical requirements.

(a) * * *

(4) * * *

(i) * * *

DETECTION LIMITS FOR INFORGANIC CONTAMINANTS

Contaminant	MCL (mg/l)	Methodology	Detection Limit (mg/l)
*	*	* * * * *	*
Arsenic	[6] 0.01	Atomic Absorption; Furnace	0.001
		Atomic Absorption; Platform—Stabilized Temperature	[7] 0.0005
		Atomic Absorption; Gaseous Hydride	0.001
		ICP-Mass Spectrometry	[8] 0.0014
*	*	* * * * *	*

* * * * *

[6] The value for arsenic is effective January 23, 2006. Unit then, the MCL is 0.05 mg/L.

[7] The MDL reported for EPA method 200.9 (Atomic Absorption; Platform—Stablized Temperature) was determined using a 2x concentration step during sample digestion. The MDL determined for samples analyzed using direct analyses (i.e., no sample digestion) will be higher. Using multiple depositions, EPA 200.9 is capable of obtaining MDL of 0.0001 mg/L.

[8] Using selective ion monitoring, EPA Method 200.8 (ICP–MS) is capable of obtaining a MDL of 0.0001 mg/L.

* * * * *

(5) The frequency of monitoring for asbestos shall be in accordance with paragraph (b) of this section: the frequency of monitoring for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium shall be in accordance with paragraph (c) of this section; the frequency of monitoring for nitrate shall be in accordance with paragraph (d) of this section; and the

frequency of monitoring for nitrite shall be in accordance with paragraph (e) of this section.

* * * * *

(c) The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in § 141.62 for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium shall be as follows:

* * * * *

(9) All new systems or systems that use a new source of water that begin operation after January 22, 2004 must demonstrate compliance with the MCL within a period of time specified by the State. The system must also comply with the initial sampling frequencies specified by the State to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

* * * * *

(f) * * *

(1) Where the results of sampling for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium indicate an exceedance of the maximum contaminant level, the State may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

* * * * *

(i) * * *

(1) For systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium is determined by a running annual average at any sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

(2) For systems which are monitoring annually, or less frequently, the system is out of compliance with the maximum contaminant levels for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium if the level of a contaminant is greater than the MCL. If confirmation samples are required by the State, the determination of compliance will be based on the annual average of the initial MCL exceedance and any State-required confirmation samples. If a system fails to collect the required number of samples, compliance (average concentration) will be based on the total number of samples collected.

* * * * *

(4) Arsenic sampling results will be reported to the nearest 0.001 mg/L.

* * * * *

(k) * * *

(1) * * *

Contaminant and methodology [13]	EPA	ASTM [3]	SM [4]	Other
* * *	*	*	*	*
Arsenic [14]:				
Inductively Coupled Plasma [15]	[2] 200.7	.....	[15] 3120B	
ICP-Mass Spectrometry	[2] 200.8	.....	.....	
Atomic Absorption; Platform	[2] 200.9	.....	.....	
Atomic Absorption; Furnace	.....	D–2972–93C	3113B	
Hydride Atomic Absorption	.....	D–2972–93B	3114B	
* * *	*	*	*	*

* * * * *

[2] "Methods for the Determination of Metals in Environmental Samples-Supplement I", EPA–600/R–94–111, May 1994. Available at NTIS, PB 95–125472.

[3] Annual Book of ASTM Standards, 1994 and 1996, Vols. 11.01 and 11.02, American Society for Testing and Materials. The previous versions of D1688–95A, D1688–95C (copper), D3559–95D (lead), D1293–95 (pH), D1125–91A (conductivity) and D859–94 (silica) are also approved. These previous versions D1688–90A, C; D3559–90D, D1293–84, D1125–91A and D859–88, respectively are located in the Annual Book of ASTM Standards, 1994, Vols. 11.01. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[4] 18th and 19th editions of Standard Methods for the Examination of Water and Wastewater, 1992 and 1995, respectively, American Public Health Association; either edition may be used. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005.

* * * * *

[13] Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (*i.e.*, no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120 B sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony, lead, and thallium by Method 200.9; antimony and lead by Method 3113 B; and lead by Method D3559–90D unless multiple in-furnace depositions are made.

[14] If ultrasonic nebulization is used in the determination of arsenic by Methods 200.7, 200.8, or SM 3120 B, the arsenic must be in the pentavalent state to provide uniform signal response. For methods 200.7 and 3120 B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 μL of 30% hydrogen peroxide per 100ml of solution. For direct analysis of arsenic with method 200.8 using ultrasonic nebulization, samples and standards must contain one mg/L of sodium hypochlorite.

[15] After January 23, 2006 analytical methods using the ICP–AES technology, may not be used because the detection limits for these methods are 0.008 mg/L or higher. This restriction means that the two ICP–AES methods (EPA Method 200.7 and SM 3120 B) approved for use for the MCL of 0.05 mg/L may not be used for compliance determinations for the revised MCL of 0.01 mg/L. However, prior to 2005 systems may have compliance samples analyzed with these less sensitive methods.

* * * * *

(2) Sample collection for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the table below:

Contaminant	Preservative [1]	Container [2]	Time [3]
*	*	*	*
Arsenic	Conc HNO_3 to pH <2.	P or G	6 months
*	*	*	*

[1] For cyanide determinations samples must be adjusted with sodium hydroxide to pH 12 at the time off collection. When chilling is indicated the sample must be shipped and stored at 4°C or less. Acidification of nitrate or metals samples may be with a concentrated acid or a dilute (50% by volume) solution of the applicable concentrated acid. Acidification of samples for metals analysis is encouraged and allowed at the laboratory rather than at the time of sampling provided the shipping time and other instructions in Section 8.3 of EPA Methods 200.7 or 200.8 or 200.9 are followed.

[2] P = plastic, hard or soft; G = glass, hard or soft.

[3] In all cases samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers or holding times that is specified in method.

* * * * *

(3) * * * To receive certification to conduct analyses for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite and selenium and thallium, the laboratory must:

* * * * *

(ii) * * *

Contaminant	Acceptance limit
*	*
Arsenic	±30 at ≥0.003 mg/L
*	*

* * * * *

6. Amend § 141.24 by:

a. Adding a new sentence to the end of paragraph (f)(15) introductory text,

b. Revising paragraphs (f)(15)(i) and (f)(15)(ii) and adding new paragraphs (f)(15)(iii) through (f)(15)(v),

c. Adding paragraph (f)(22),

d. Adding a new sentence to the end of paragraph (h)(11) introductory text,

e. Revising paragraphs (h)(11)(i) and (h)(11)(ii) and adding new paragraphs (h)(11)(iii) through (h)(11)(v), and

f. Adding paragraph (h)(20).

The revisions and additions read as follows:

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical methods.

(f) * * *

(15) * * * If one sampling point is in violation of an MCL, the system is in violation of the MCL.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point.

(ii) Systems monitoring annually or less frequently whose sample result exceeds the MCL must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling.

(iii) If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(iv) If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected.

(v) If a sample result is less than the detection limit, zero will be used to calculate the annual average.

* * * * *

(22) All new systems or systems that use a new source of water that begin operation after January 22, 2004 must demonstrate compliance with the MCL within a period of time specified by the State. The system must also comply with the initial sampling frequencies specified by the State to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

* * * * *

(h) * * *

(11)* * * If one sampling point is in violation of an MCL, the system is in violation of the MCL.

(i) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point.

(ii) Systems monitoring annually or less frequently whose sample result exceeds the regulatory detection level as defined by paragraph (h)(18) of this section must begin quarterly sampling. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling.

(iii) If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(iv) If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected.

(v) If a sample result is less than the detection limit, zero will be used to calculate the annual average.

* * * * *

(20) All new systems or systems that use a new source of water that begin operation after January 22, 2004 must demonstrate compliance with the MCL within a period of time specified by the State. The system must also comply with the initial sampling frequencies specified by the State to ensure a system can demonstrate compliance with the MCL. Routine and increased monitoring frequencies shall be conducted in accordance with the requirements in this section.

Subpart F—[Amended]

7. Amend the table in § 141.51(b) by adding a new entry for ''Arsenic'' in alphabetical order and adding a new endnote to read as follows:

§ 141.51 Maximum contaminant level goals for inorganic contaminants.

* * * * *

(b) * * *

Contaminant	MCLG (mg/L)
*	*
Arsenic	zero [1]
*	*

[1] This value for arsenic is effective January 23, 2006. Until then, there is no MCLG.

Subpart G—[Amended]

8. Amend § 141.60 by adding paragraph (b)(4) to read as follows:

§ 141.60 Effective dates.

* * * * *

(b) * * *

(4) The effective date for § 141.62(b)(16) is January 23, 2006.

9. Amend § 141.62 by:

a. Revising the first sentence of paragraph (b) introductory text,

b. Adding a new entry ''(16)'' for arsenic to the table in paragraph (b),

c. Adding a new entry for ''Arsenic'' in alphabetical order, adding new endnotes 4 and 5, adding a new item 12 and revising items 2 and 6 to list of ''Key to BATs in Table'' and revising the heading to the table in paragraph (c),

d. Adding paragraph (d).

The revisions and additions read as follows:

§ 141.62 Maximum Contaminant Levels for inorganic contaminants.

* * * * *

(b) The maximum contaminant levels for inorganic contaminants specified in

paragraphs (b) (2)–(6), (b)(10), and (b) (11)–(16) of this section apply to community water systems and non-transient, non-community water systems. * * *

* * * * *

Contaminant	MCL (mg/L)
* * * * *	
(16) Arsenic	0.01

(c) * * *

BAT FOR INORGANIC COMPOUNDS LISTED IN SECTION 141.62(B)

Chemical Name	BAT(s)
* * * * *	
Arsenic [4]	1, 2, 5, 6, 7, 9, 12 [5]
* * * * *	

* * * * *

[4] BATs for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.

[5] To obtain high removals, iron to arsenic ratio must be at least 20:1.

Key to BATs in Table

1 = Activated Alumina
2 = Coagulation/Filtration (not BAT for systems < 500 service connections)
* * * * *
5 = Ion Exchange
6 = Lime Softening (not BAT for systems < 500 service connections)
7 = Reverse Osmosis
* * * * *
9 = Electrodialysis
* * * * *
12 = Oxidation/Filtration
* * * * *

(d) The Administrator, pursuant to section 1412 of the Act, hereby identifies in the following table the affordable technology, treatment technique, or other means available to systems serving 10,000 persons or fewer for achieving compliance with the maximum contaminant level for arsenic:

SMALL SYSTEM COMPLIANCE TECHNOLOGIES (SSCTS) [1] FOR ARSENIC [2]

Small system compliance technology	Affordable for listed small system categories [3]
Activated Alumina (centralized)	All size categories.
Activated Alumina (Point-of-Use) [4]	All size categories.
Coagulation/Filtration [5]	501–3,300, 3,301–10,000.
Coagulation-assisted Microfiltration	501–3,300, 3,301–10,000.
Electrodialysis reversal [6]	501–3,300, 3,301–10,000.
Enhanced coagulation/filtration	All size categories
Enhanced lime softening (pH> 10.5)	All size categories.
Ion Exchange	All size categories.
Lime Softening [5]	501–3,300, 3,301–10,000.
Oxidation/Filtration [7]	All size categories.
Reverse Osmosis (centralized) [6]	501–3,300, 3,301–10,000.
Reverse Osmosis (Point-of-Use) [4]	All size categories.

[1] Section 1412(b)(4)(E)(ii) of SDWA specifies that SSCTs must be affordable and technically feasible for small systems.

[2] SSCTs for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.

[3] The Act (ibid.) specifies three categories of small systems: (i) those serving 25 or more, but fewer than 501, (ii) those serving more than 500, but fewer than 3,301, and (iii) those serving more than 3,300, but fewer than 10,001.

[4] When POU or POE devices are used for compliance, programs to ensure proper long-term operation, maintenance, and monitoring must be provided by the water system to ensure adequate performance.

[5] Unlikely to be installed solely for arsenic removal. May require pH adjustment to optimal range if high removals are needed.

[6] Technologies reject a large volume of water—may not be appropriate for areas where water quantity may be an issue.

[7] To obtain high removals, iron to arsenic ratio must be at least 20:1.

Subpart O—[Amended]

10. Amend § 141.154 by revising paragraph (b) and adding paragraph (f) to read as follows:

§ 141.154 Required additional health information.

* * * * *

(b) Ending in the report due by July 1, 2001, a system which detects arsenic at levels above 0.025 mg/L, but below the 0.05 mg/L, and beginning in the report due by July 1, 2002, a system that detects arsenic above 0.005 mg/L and up to and including 0.01 mg/L:

(1) Must include in its report a short informational statement about arsenic, using language such as: While your drinking water meets EPA's standard for arsenic, it does contain low levels of arsenic. EPA's standard balances the current understanding of arsenic's possible health effects against the costs of removing arsenic from drinking water. EPA continues to research the health effects of low levels of arsenic, which is a mineral known to cause cancer in humans at high concentrations and is linked to other health effects such as skin damage and circulatory problems.

(2) May write its own educational statement, but only in consultation with the Primacy Agency.

* * * * *

(f) Beginning in the report due by July 1, 2002 and ending January 22, 2006, a community water system that detects arsenic above 0.01 mg/L and up to and including 0.05 mg/L must include the arsenic health effects language prescribed by Appendix A to Subpart O.

11. Amend Appendix A to Subpart O by revising the entry for arsenic under ''Inorganic contaminants:'' and adding an endnote to read as follows:

Appendix A to Subpart O—Regulated Contaminants

Contaminant (units)	Traditional MCL in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in drinking water	Health effects language
*	*	*	*	*	*	*
Inorganic contaminants:						
*	*	*	*	*	*	*
Arsenic (ppb)	[1] 0.01	1000	[1] 10	[1] 0	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
*	*	*	*	*	*	*

* * * * *

1. These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

Subpart Q—[Amended]

12. Amend Appendix A to Subpart Q by:

a. Revising the entry for ''2. Arsenic'' under ''B. Inorganic Chemicals (IOCs)'',

b. Redesignating endnotes 8 through 17 as endnotes 10 through 19 in the table and at the end of the table, and

c. Adding endnotes 8 and 9.

The revisions and additions read as follows:

Appendix A to Subpart Q—NPDWR Violations and Other Situations Requiring Public Notice [1]

Contaminant	MCL/MRDL/TT violations [2]		Monitoring & testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
*	*	*	*	*
B. Inorganic Chemicals (IOCs).				
*	*	*	*	*
2. Arsenic	2	[8] 141.62(b)	3	[9] 141.23(a), (c)
*	*	*	*	*

Appendix A—Endnotes

1. Violations and other situations not listed in this table (e.g., reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (e.g., Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § 141.202(a) and § 141.203(a).

2. MCL–Maximum contaminant level, MRDL–Maximum residual disinfectant level, TT–Treatment technique.

* * * * *

8. The arsenic MCL citations are effective January 23, 2006. Until then, the citations are § 141.11(b) and § 141.23(n).

9. The arsenic Tier 3 violation MCL citations are effective January 23, 2006. Until then, the citations are § 141.23(a), (l).

* * * * *

13. Amend Appendix B to Subpart Q by:

a. Revising entry ''9. Arsenic'' under ''C. Inorganic chemicals (IOCs)'',

b. Redesignating endnotes 11 through 21 as endnotes 12 through 22 in the table and at the end of the table, and

c. Adding endnote 11.

The revisions and additions read as follows:

Appendix B to Subpart Q—Standard Health Effects Language for Public Notification

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
*	*	*	*
9. Arsenic [11]	0	0.01	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
*	*	*	* * * *

Appendix B—Endnotes

1. MCLG–Maximum contaminant level goal.

2. MCL–Maximum contaminant level.

* * * * *

11. These arsenic values are effective January 23, 2006. Until then, the MCL is 0.05 mg/L and there is no MCLG.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart B—[Amended]

2. Amend § 142.16 by revising paragraph (e) introductory text, reserving paragraph (i), and adding paragraphs (j) and (k) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(e) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.32, 141.40, 141.61 and 141.62 for a newly regulated contaminant must contain the following (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements):

* * * * *

(i) [reserved]

(j) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.32, 141.40, 141.61 and 141.62 for an existing regulated contaminant must contain the following (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements):

(1) If a State chooses to issue waivers from the monitoring requirements in §§ 141.23, 141.24, and 141.40, the State shall describe the procedures and criteria which it will use to review waiver applications and issue wavier determinations. The State shall provide the same information required in paragraph (e)(1)(i) and (ii) of this section. States may update their existing waiver criteria or use the requirements submitted under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (i.e., Phase II/V rule) in 16(e) of this section. States may simply note in their application any revisions to existing waiver criteria or note that the same procedures to issue waivers will be used.

(2) A monitoring plan by which the State will ensure all systems complete the required monitoring by the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (i.e. Phase II/V rule) in 16(e) of this section. States may simply note in their application any revisions to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.

(k) States establish the initial monitoring requirements for new systems and new sources. States must explain their initial monitoring schedules and how these monitoring schedules ensure that public water systems and sources comply with MCL's and monitoring requirements. States must also specify the time frame in which new systems will demonstrate compliance with the MCLs.

3. Amend the table in § 142.62(b) by adding a new entry for ''Arsenic'' in alphabetical order, adding new endnotes 4 and 5, adding a new item 12 to list of ''Keys to BATs in Table'' and revising the heading to the table in paragraph (b) to read as follows:

§ 142.62 Variances and exemptions from the maximum contaminant levels for organic and inorganic chemicals.

* * * * *

(b) * * *

BAT FOR INORGANIC COMPOUNDS LISTED IN § 141.62(B)

Chemical name	BAT(s)
*	* * * *
Arsenic [4]	[5] 1, 2, 5, 6, 7, 9, 12
*	* * * * *

* * * * *

[4] BATs for Arsenic V. Pre-oxidation may be required to convert Arsenic III to Arsenic V.

[5] To obtain high removals, iron to arsenic ratio must be at least 20:1.

* * * * *

Key to BATs in Table

1 = Activated Alumina

2 = Coagulation/Filtration (not BAT for systems < 500 service connections)

* * * * *

5 = Ion Exchange

6 = Lime Softening (not BAT for systems < 500 service connections)

7 = Reverse Osmosis

* * * * *

9 = Electrodialysis

* * * * *

12 = Oxidation/Filtration

* * * * *

[FR Doc. 01–1668 Filed 1–19–01; 8:45 am]

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Federal Register

Monday,

January 22, 2001

Part IX

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 15, et al.

Trust Management Reform: Leasing/ Permitting, Grazing, Probate and Funds Held in Trust; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 15, 114, 115, 162 and 166

RIN 1076–AE00

Trust Management Reform: Leasing/ Permitting, Grazing, Probate and Funds Held in Trust

AGENCY: Bureau of Indian Affairs.

ACTION: Final Rule.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), revises its regulations in the areas of probate, funds held in trust for Indian tribes and individual Indians, leasing/ permitting, and grazing. These revisions are meant to further fulfill the Secretary's fiduciary responsibility to federally-recognized tribes and individual Indians. Particularly, revisions to the probate regulations institute necessary procedures to expedite the probate process for Indian decedents' estates. Revisions to regulations dealing with funds held in trust standardize the process for collecting, distributing, and accounting for individual Indian monies and monies held in trust for tribal governments. Revisions to leasing/ permitting regulations implement the Indian Agricultural Resource Management Act and address appropriate procedures for entering into leases and permits on Indian lands and, more importantly, aid in properly determining and accounting for the value of such leases to individual land owners and tribal entities. Revisions in the grazing permit regulations address similar concerns and further standardize the process and forms utilized in granting permits on Indian lands. In the interests of economy of administration, and because all the revisions clarify and standardize Departmental policy, they are illustrated in one rulemaking vehicle.

EFFECTIVE DATE: March 23, 2001.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, Department of the Interior, Office of the Secretary, 1849 C Street, NW., MS 7412 MIB, Washington, DC 20240, telephone 202/208–4582.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Part-by-Part Analysis
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under Small Businesses Regulatory Enforcement Fairness Act of 1996
E. Review Under the Paperwork Reduction act
F. Review Under Executive Order 13132—Federalism
G. Review Under the National Environmental Policy Act
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

Pursuant to the Department's ''Trust Management Improvement Project—High Level Implementation Plan,'' certain parts within 25 CFR were identified for immediate revision. These parts were identified through an internal review by the Bureau of Indian Affairs (BIA) in consultation with the Office of the Special Trustee for American Indians (OST), and from tribal responses to consultations held in the field over a period of years. Additionally, non-governmental Indian organizations were consulted on areas of BIA trust management needing clarification and more uniform application of policy and administration throughout Indian Country. This rulemaking was initiated as an appropriate response to the Administration's stated goal of improving the administration and management of individual Indian and tribal trust resources. The Final Rule was developed with attention to Secretarial Order 3215, ''Principles for the Discharge of the Secretary's Trust Responsibility,'' of April 28, 2000, which was converted to and made permanent in the Departmental Manual on October 31, 2000. **See** 303 DM 2.

The proposed regulation was published in the **Federal Register** on July 14, 2000, (65 FR 43874) with a 90-day public comment period. During the comment period, the BIA held eight formal tribal consultation sessions to discuss the proposed regulations and receive oral comments on the record. Additionally, the BIA met informally with the interested organizations, such as the policies and procedures working group formed with the National Congress of American Indians (NCAI) and the Inter-Tribal Agricultural Council, and encouraged them to provide written comments.

Comments were forwarded to a clearinghouse for compilation, and responses by the BIA to substantive comments are noted below. The comments and compilation documents were carefully reviewed by the regulation drafting teams, made up of BIA employees from central, regional and agency offices, and trust program attorneys from the Solicitor's Office. As noted in the part-by-part analysis below, in direct response to comments the regulations have been clarified and reorganized. Additionally, some sections have been deleted, while new provisions have been added to provide for increased clarity and precision. The regulations generally have been revised to afford greater recognition of tribal sovereignty and self-determination, as well as greater recognition of the inherent rights of the Indian landowners. Time frames for BIA or Departmental action have been added, as have provisions identifying the entity within the Department responsible for taking official action. Further, we have strengthened the provisions for the BIA's enforcement of leases and permits on trust and restricted lands, including collection of trust income. Further, we have revised and standardized the provisions in each part that address the creation and maintenance of trust records.

As we explain below in the part-by-part analysis, the passage of the Indian Land Consolidation Act Amendments of 2000, Public Law 106–462 (ILCA Amendments), extensively alters the legal framework governing activities on fractionated trust and restricted lands. As a result, at this time the Department will not issue new final regulations affecting business and residential leases. Such regulations will be re-proposed after the full impact of the ILCA Amendments is fully ascertained and more consultation with tribes is held.

Lastly, as explained more fully below, in order to accommodate many of the comments pertaining to Individual Indian Money (IIM) accounts, including supervised accounts and the use of IIM accounts to secure loans, the BIA will not issue final regulations in part 115 that would directly address these subjects. These provisions will be re-proposed for further comment and consultations.

To facilitate comparison between the Proposed Rule and the Final Rule, we have provided the following tables. Sections deleted from the Proposed Rule are denoted with asterisks (**) in the final regulation columns, and new sections added to the final regulations are denoted by their section numbers and a plus (+) sign in the column for final regulations.

25 CFR PART 15.—PROBATE OF INDIAN ESTATES EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.1	.1	.104	.106	.202	.202	.303	.303	.310	.310	.....	+.405
.2	.2	.105	.104	.203	.203	.304	.304	.311	.311	.405	.403
.3	.3	.106	.105	.204	.206	.305	.305	.312	.312	.501	.501
.4	.4	.107	.107	.205	**	.306	.306	.401	.401	.502	.502
.101	.101	.108	.108	.206	.205	.307	.307	.402	.402	.503	**
.102	.102	.109	.109	.301	.301	.308	.308	.403	.403	.....	+.503
.103	.103	.201	.201	.302	.302	.309	.309	.404	.404	.....	+.504

25 CFR PART 115.—TRUST FUNDS FOR TRIBES AND INDIVIDUAL INDIANS

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.1	.001	.208	.812	.311	**	.337	.502	.363	**	.389	**	.506	.607
.2	.002	.209	**	.312	**	.338	.503	.364	.418	.390	**	.507	.608
.100	.700	.210	.806	.313	**	.339	.504	.365	.413	.400	.900	.508	.609
.101	.701	.211	.814	.314	.409	.340	.403	.366	.428	.....	+.400	.509	.610
.102	.103	.212	.818	.315	.416	.341	**	.367	.429	.401	.901	.510	.611
.102	.702	.213	.819	.316	**	.342	**	.368	.430	.....	+.401	.511	.612
.103	.805	.214	.820	.317	**	.343	**	.369	**	.402	.902	.512	.613
.104	**	.215	.808	.318	**	.344	.422	.370	.431	.340	+.402	.513	.614
.105	**	.216	.809	.319	**	.345	.423	.371	**	.403	.903	.514	.615
.106	.703	.216	.813	.320	**	.346	.424	.372	**	.404	.904	.....	+.606
.107	.705	.217	.810	.321	**	.347	.425	.373	**	.....	+.406	.....	+.616
.108	.706	.218	.811	.322	**	.348	.102	.374	**	.314	+.407	.515	.617
.109	.707	.219	.815	.323	**	.349	**	.375	**	.....	+.408	.516	.618
.110	.708	.220	.816	.324	**	.350	**	.376	**	.....	+.412	.517	.619
.111	.710	.221	.817	.325	**	.351	**	.377	**	.....	+.414	.518	.620
.112	.711	.300	**	.326	**	.352	**	.378	**	.....	+.419	.600	.107
.113	.712	.301	**	.327	**	.353	**	.379	**	.358	+.421	.700	.1000
.114	.713	.302	**	.328	.102	.354	**	.380	**	.....	+.500	.701	**
.200	.800	.303	**	.329	.410	.355	**	.381	**	+.501	.702	.1001	
.201	.801	.304	.404	.330	.411	.356	**	.382	**	.....	+.600	+.704	
.202	.802	.305	.709	.331	**	.357	.421	.383	**	.500	.601	.801	.105
.203	.803	.306	.405	.332	.415	.358	.420	.384	**	.501	**	.802	.106
.204	.709	.307	**	.333	**	.359	.417	.385	.104	.502	.602	.803	.100
.205	**	.308	**	.334	**	.360	.427	.386	**	.503	.603	.....	.804
.206	**	.309	**	.335	**	.361	**	.387	**	.504	.604	.....	+.807
.207	**	.310	**	.336	**	.362	**	.388	**	.505	.605	.....	.....

PART 162.—LEASES AND PERMITS

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.1	.100	.23	.244	.42	.226	.83	**	.126	.252	.173	**
.1	.103	.24	.230	.43	.227	.84	**	.126	.619	.174	**
.2	.101	.25	.230	.44	.223	.85	**	.127	.240	.175	**
.3	.103	.26	.219	.45	.234	.86	**	.127	.612	.176	**
	+.105	.26	.220	.46	.234	.87	**	.....	+.254	.177	**
	+.106	.26	.221	.47	.235	.88	**	.128	.255	.178	**
	+.107	.26	.223	.48	.236	.89	**	.....	+.256	.179	**
.3	.200	.26	.231	.49	.236	.90	**	.129	**	.180	.111
.4	.108	.26	.238	.50	.236	.91	**	.130	.620	.180	.112
	+.109	.27	.229	.51	.237	.100	.226	.140	.102	.....	+.300
.5	.202	.28	**	.52	.237	.101	.226	.141	**	.....	+.400
.6	.203	.....	+.231	.....	+.239	.102	.110	.142	**	.190	.500
.7	.205	.29	.232	.60	**	.110	.228	.143	**	.191	.501
.8	.204	.30	.233	.61	**	.110	.241	.144	**	.192	.502
.9	.202	.31	.233	.62	.206	.111	.228	.145	**	.193	**
.10	**	.32	.224	.63	**	.111	.241	.146	**	.194	.503
.11	.201	.33	**	.64	.207	.112	.228	.147	.102	.195	**
.12	.214	.34	.224	.65	**	.112	.241	.150	.211	.....	.601
.12	.215	.34	.613	.66	.207	.113	.228	.151	.211	.....	.602
.13	.213	.35	.224	.66	.212	.113	.241	.152	.222	.....	.603
.14	.217	.35	.247	.67	.104	.114	.228	.160	**	.....	.604
.15	.217	.36	.248	.68	.104	.114	.241	.161	**	.....	.605
.16	.217	.36	.615	.70	.102	.120	**	.162	**	.....	.606
.17	.110	.37	.225	.70	.207	.121	.250	.163	**	.....	.607

PART 162.—LEASES AND PERMITS—Continued

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.18	.218	.37	.249	.71	.208	.121	.617	.164	**	.....	.608
.19	**	.37	.614	.71	.209	.122	.251	.165	**	.....	.609
.20	.221	.37	.616	.72	.207	.122	.618	.166	**	.....	.610
.21	.230	.38	.248	.73	.210	.123	.251	.167	**	.....	.611
.21	.242	.38	.615	.74	.207	.123	.618	.168	**	.....	+.621
.....	.22	.230	.39	.224	.75	.216	.124	.251	.169	**	+.622
	+.243	.40	.224	.80	**	.124	.253	.170	**	.....	+.623
	+.245	.....	.....	.81	**	.125	.252	.171	**	.....	.....
.22	.246	.41	.226	.82	**	.125	.619	.172	**	.....	.....

25 CFR PART 166.—GRAZING PERMITS ON INDIAN LANDS

Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final	Proposed	Final
.1	.1	.122	.221	.....	+.308	.412	.418	.606	.607	.811	.811
	+.2	.123	.222	.206	.309	.413	.411	.607	.608	.812	.812
.2	.3	.124	.223	.207	.310	.414	.412	.700	.700	.813	.813
.100	.200	.125	.224	.208	.316	.415	.419	.701	.701	.814	.814
.101	.201	.126	.225	.209	.317	.416	.420	.....	+.702	.815	.815
.102	.203	.127	.226	.210	.311	.417	.414	.702	.703	.816	.816
.103	.204	.128	.1	.211	.312	.....	+.415	.703	.704	.817	.817
	+.205	.129	**	212	.313	.418	.413	.704	.706	.818	.818
.104	.202	.130	**	.....	+.314	.419	**	.705	.606	.819	.819
.105	.206	.131	**	.....	+.315	.420	.419	.706	.705	.900	**
.106	.207	.132	**	.300	.100	.421	.416	.707	**	.1000	.1000
.107	.208	.133	**	.301	.101	.422	.417	.....	+.707	.1000	.1001
.108	.209	.134	**	.302	.102	.....	.421	.708	.708	.1100	.900
.109	.209	.135	.1	.303	.103	.423	.422	.709	**	.1101	.901
.110	.209	.136	.227	.304	.104	.424	.423	.....	+.709	.1102	.902
.111	.212	.137	.228	.400	.400	.425	.424	.800	.800	.1103	.903
.112	.213	.138	.229	.401	.401	.500	.500	.801	.801	.1104	.904
.113	.214	.....	+.230	.402	.402	.501	.501	.802	.802	.1105	.905
.114	.210	.....	+.231	.403	.403	.502	.502	.803	.803	.1106	.906
	+.211	.200	.300	.404	.404	.503	.503	.804	.804	.1107	.907
.115	.215	.201	.301	.405	.405	.504	.504	.805	**	.1108	.908
.116	.216	.202	.302	.406	.406	.600	.600	.....	+.805	.1109	.909
.117	.217	.203	.303	.407	.407	.601	.601	.806	.806	.1110	.910
.118	.218	.....	+.304	.408	.309	.602	.602	.807	.807	.....	.....
.119	.219	.204	.305	.409	.408	.603	.603	.808	.808	.....	.....
.120	.220	.....	+.306	.410	.409	.604	.604	.809	.809	.....	.....
.121	**	.205	.307	.411	.410	.605	.605	.810	.810	.....	.....

II. Response to Comments

The Department solicited comments from all interested parties through its publication of the Proposed Rule on July 14, 2000, and further solicited informal comments through eight regional consultation sessions: Aberdeen, SD (August 7–8, 2000); Anchorage, AK (August 10, 2000); Oklahoma City, OK (August 10, 2000); Bloomington, MN (August 17, 2000); Albuquerque, NM (August 21 and 22, 2000) [two separate consultation meetings]; Billings, MT (August 24, 2000); and Reno, NV (August 28–29, 2000). Transcripts were made of these sessions in order to ensure that both oral and written comments were considered. Following the consultation meetings, several BIA regional and agency offices established informal local working groups with tribes to encourage discussion of the proposed regulations and submission of written comments. Throughout the comment period we met on an informal basis to discuss the regulations with interested organizations, including the NCAI working group and the Inter-Tribal Agricultural Council.

The Department received a total of 317 written comments on all parts of the proposed rulemaking, representing 349 individual signatures. Written responses were received from respondents in 25 states, although many responses were received in a format that did not reveal their geographic origin. The Department received 159 written responses from tribal governments (representing 168 signatures and including four tribal government resolutions), and 31 responses from non-governmental Indian organizations (representing 34 signatures). Six respondents identified themselves as tribal members. Additionally, one response was received from a state governmental entity, and five from business entities. The remaining respondents included unaffiliated individuals (57 responses) and federal agencies (58 responses, representing 78 individual signatures). All substantive comments were reviewed by the Department and, depending upon their merit, the Department accepted, accepted with revision, or rejected for reason particular comments made on each part of the rule. Substantive comments are summarized below.

A. General Comments—Overall Rulemaking

Many tribes, tribal organizations and individuals expressed strong opinions that the Department should not finalize these regulations as planned. Primarily, respondents expressed concern that the process by which the regulations were

developed did not include sufficient time to analyze the scope of the regulations and identify and resolve issues, nor did it incorporate sufficient consultation with tribes and affected individuals. The regulations were proposed only after full communication of the Department's intentions after requesting information and opinions from the tribes and individual Indians affected by the regulations.

The Department has committed to this schedule in response to the tremendous need to improve the execution of the Secretary's trust responsibility in accordance with the American Indian Trust Fund Management Reform Act, 25 U.S.C. § 4001 *et seq.* We have committed to this schedule through the Department's High Level Implementation Plan, developed in cooperation with and under the oversight of the OST, and in response to ongoing litigation.

Well before the proposed regulations were published in the **Federal Register**, the Department recognized the need to complete these revisions prior to the end of the current Administration in order to prevent delays caused by the upcoming presidential transition. Based on priorities identified by BIA trust program staff, we identified the regulatory reforms that could be accomplished within this time frame and developed a schedule that would ensure consultation with tribes and consideration of their opinions to the greatest extent possible. We invited the NCAI to convene a work group of tribal representatives and other interested persons to assist in developing the regulations. To assist the NCAI, the BIA provided funding and agreed to meet as many times as necessary to complete the job. Also, we conducted early consultations with tribal leaders, advising them of the specific trust regulations to be addressed first. These meetings provided an early opportunity for meaningful input into the rule making process.

In a significant departure from past practice, the BIA distributed the preliminary drafts of the proposed regulations to the NCAI and to tribes through BIA regional directors, with a request for comments and recommendations. Several subsequent meetings were held with the NCAI working group to discuss the evolving draft regulations prior to publishing the proposed regulations on July 14, 2000. These meetings included the Assistant Secretary—Indian Affairs, the Deputy Commissioner of Indian Affairs, staff of the Trust Policies and Procedures (TPP) project, trust program managers, and trust program attorneys from the Solicitor's Office. Notably, tribal representatives from each BIA region and BIA managers participated in a three-day meeting in Mesa, AZ, in April 2000, to discuss the draft regulations.

Following the publication of the proposed rules, as noted above TPP staff conducted eight regional consultation meetings with tribal leaders, individual Indians, and other interested parties. In sum, despite the accelerated schedule for developing and issuing these regulations, tribes and individual Indians have had an extraordinary opportunity to provide meaningful input on the proposed regulations through informal consultations on the early drafts, formal consultations, and the public comment period.

Many respondents asserted that Executive Order 13084 required a negotiated rule-making process in developing and implementing the proposed regulations. Contrary to these assertions, Executive Order 13084 does not require a negotiated rule-making process.

We disagree with the concern expressed by several respondents that the proposed rules would create new processes and requirements in all areas of trust management, resulting in negative impacts to both tribes and individual Indians. Rather, these regulations strengthen the Department's exercise of its trust responsibility by codifying current practices and will provide an important measure of consistency and uniformity in these practices on a nationwide basis.

Many commenters believe that the proposed regulations did not sufficiently address the issues of tribal sovereignty and principles of tribal self-determination. We agree that the proposed regulations did not go far enough to recognize tribal sovereignty and self-determination, and have now made significant revisions within the bounds of existing law. However, many of the antiquated trust statutes that govern the actions of the Department predate the tribal self-determination legislation. When amendatory legislation is enacted, we will revise the regulations accordingly.

The management of trust records is integral to the performance of the trust responsibility, and must be carried out by all entities and individuals who undertake such activities, including tribes performing federal trust functions. It is essential that everyone managing trust assets, both tribes and the Department, be subject to the same requirements for the creation, maintenance, and retention of records that evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the management of trust assets. Without a consistent nationwide system for creating and maintaining trust records, the United States will be unable to fulfill its trust responsibilities to tribes or individual Indians. Accordingly, the records language in the proposed regulations have been modified to be consistent across the board.

Of particular importance are the provisions in each part that specify who owns trust records: Records are the property of the United States if they are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part pursuant to Public Law 93–638 as amended, including the operation of a trust program, and evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under the regulations. If records are not covered by the preceding definition, but are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior, they are the property of the tribe. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under these regulations, the tribe may be prevented from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

The language is consistent in each part of the final regulations, and builds on the provisions that were proposed under part 115. The Department will provide more detailed direction on the management of trust records in 2001.

Finally, we received comments requesting that the Department include in the regulations provisions for the establishment and maintenance of an accounts receivable system. The Department is building such a system in its Trust Asset and Accounting Management System. However, we believe the regulations are not an appropriate place to address an accounts receivable system; to define such a system by regulation would remove operational flexibility that is necessary to address the many complex factors involved in managing trust assets.

III. Part-by-Part Analysis

A. 25 CFR Part 15—Probate of Indian Estates

The purpose of this regulation is to describe the authorities, policies and procedures the BIA uses to probate an Indian decedent's estate. This is a revision to the existing part and amends and replaces the part in its entirety.

The regulation implements administrative procedures by which the BIA will process and determine certain probate cases where a hearing is not required nor requested. These procedures, embodying a return to the BIA of the responsibility to determine particular probate cases, are the result of the recommendations of the Department's Indian Probate Reinvention Lab (IPRL). Formed in 1999, the IPRL examined the Department's Indian probate process from a multi-agency perspective, including the BIA, the Office of Hearings and Appeals (OHA), which handles Indian probate cases requiring hearings, and the OST. The IPRL recommended, among other things, that the BIA establish attorney decision-makers at regional offices to handle certain probate cases under criteria to be established by regulation. This recommendation was based on an analysis that included reviewing reports from previous studies of Indian probate matters, site visits and interviews of customers and employees. The final revisions of part 15 will implement in the BIA the procedural aspects of the IPRL's recommendations. At the appropriate time, the OHA will amend its regulations to accommodate the BIA's responsibility for these probate cases and to ensure that the same standards and criteria for determining heirs and paying claims are consistently applied between the BIA and OHA.

In addition to establishing the process by which the attorney decision makers in the BIA will decide certain probate cases, the regulations in part 15 also address the summary processing of Indian estates. Formerly handled only by agency superintendents, summary distribution of estates will also be decided by the attorney decision makers. See 65 FR 25449–25450 (May 2, 2000).

The various subparts of part 15 address the purpose and scope of the Indian probate procedures; the definition of terms; the mechanics of initiating the probate process, including the appropriate notifications of the selection of the deciding official; the preparation of the probate package itself, including the identification of necessary documents to facilitate a timely process; the disposition of claims against an estate; the ultimate distribution of the decedent's assets to the determined heirs or devisees; and the procedures for appeals should a dispute arise during any stage of the probate process. Cross references have been made to the OHA's hearings and appellate procedures and disposition of funds held in trust for decedents.

General Observations Regarding Changes From Proposed Rule

Overall, respondents commended the Department for its efforts to address a longstanding problem with the probate backlog primarily caused by a lack of staffing and resources over the years. Commenters focused on the need for devising specific time frames for each step of the probate process to ensure timely processing of the estates including the preparation and submission of the probate package, issuance of decisions, and the closing of estates. A primary concern for many commenters in adding a new BIA deciding official to expedite the probate process was that probable heirs or beneficiaries should be advised of the right to a hearing before an ALJ. These concerns were given great consideration and incorporated into the final regulations.

Finally, to be consistent with the regulations published under parts 115, 162 and 166, we have added two sections addressing the maintenance of records relating to probate cases.

Subpart A—Introduction

Summary of Subpart

This subpart addresses the purpose and scope of the Indian probate procedures, the definition of terms used in part 15, and process for probating estates. This subpart sets forth the limitation on the scope of the application of part 15 to the Five Civilized Tribes in Oklahoma and the Osage Nation. The overall process from notification of death to the appeal of decisions is described by reference to other subparts.

Comments

The Secretary's jurisdiction to decide probate cases is limited to trust or restricted assets except as otherwise provided by federal laws for the Five Civilized Tribes and the Osage Nation. The Final Rule clarifies that trust lands of the Five Civilized Tribes and Osage Nation may be included in part 15. Several respondents requested more clarification of terms used in the regulations. In response to these requests, the definitions ''OTFM,'' ''probate clerk,'' ''trust land'' and ''restricted land'' have been added to § 15.2.

The Final Rule does not significantly depart from the Proposed Rule with respect to the basic steps in the probate process and the preparation of the probate package. In response to several comments, the steps in the probate process prior to the submission to a deciding official have been standardized and streamlined by requiring that all agencies and tribes prepare the probate package in the same manner as recommended by the IPRL. The final regulations reflect the addition of the attorney decision maker as a BIA deciding official to expedite the probate of estates in certain circumstances.

Subpart B—Starting the Probate Process

Summary of Subpart

This subpart includes the procedures for starting the probate process by notifying the BIA of the death of an Indian with trust or restricted assets; the preparation of the probate package itself, including the identification, collection, and submission of the necessary documents to the BIA to facilitate the timely processing of a probate package; the circumstances in which the family of a decedent may apply for emergency assistance for funeral arrangements; the assignment of the responsibility to the BIA agency to process the package; and the procedures for the potential heirs' disclaimer of interest in the estate.

Comments

We received several comments on the types of documents that should be acceptable as evidentiary documents to support the family heirship data. Of significant importance to these respondents is the reliability of documentation relied on for proof of death. In the Final Rule at § 15.101, we have clarified the documents necessary to prove death by requiring that a certified copy of a death certificate must be provided to the BIA. Only in circumstances where a death certificate is non-existent will the BIA accept other documents. This section also allows for a tribe to verify a member's death. Where evidence other than a death certificate is submitted to verify a death, an affidavit of death must be submitted that is prepared by the tribe with whom the decedent associated or someone with direct personal knowledge about the decedent's death.

Many comments addressed the provision that allows immediate assistance for funeral services from the

decedent's IIM account. To distinguish between emergency financial assistance to pay for funeral arrangements prior to the burial of the decedent and claims for funeral expenses against the decedent's estate, we added the word ''emergency'' to the question. Some commenters objected to obtaining receipts for traditional burial services such as payment of cooks and grave-diggers and the direct payment to the service providers. We weighed these objections against the Secretary's trust responsibility for proper accounting of the decedent's IIM account. Thus, we renumbered the section to § 15.106 and divided it into four subparts to clarify the cost estimates for funeral arrangements and to achieve a compromise position between tribal traditions and the Secretary's trust responsibility to preserve the decedent's IIM account for the probable heirs and beneficiaries. In order to preserve the trust estate for probable heirs or beneficiaries, the BIA continues its long-standing practice of limiting the amount of money that may be distributed for funeral expenses prior to completion of the probate. Therefore, the Final Rule does not change the limit on the amount of money that can be disbursed for funeral expenses prior to the probate.

One of the problems causing significant delays in the processing of probate files is the time-intensive gathering of evidence required as supporting documents for the probate package. In certain situations where the decedent's family resides in a remote area without transportation or telephonic communications, the collection of documents proceeds very slowly. Some respondents stated that the BIA should assume an affirmative role in assisting the family in collecting documents, rather than place the burden of obtaining all of the supporting documents entirely on the decedent's family. We accepted these comments, and have changed the wording in the Final Rule at § 15.104 from ''must'' to ''should.''

Section 15.104 lists the documents that must be included in a probate package. This section has been rearranged to provide for documents that must be obtained from a court of competent jurisdiction, which may be a tribal or state court. Name changes and orders requiring the payment of child support were added at the suggestion of the commenters. The Final Rule at § 15.104 also provides that the probate package will contain all information provided by an interested party whether the BIA has requested it or not.

We received several suggestions on the manner in which an agency or tribe is assigned the responsibility for preparing probate packages for non-enrolled decedents and decedents enrolled in more than one tribe. The proposed standard was the agency that has jurisdiction over the trust property of the decedent or the greater amount of trust property. Respondents suggested that we assign responsibility to the agency with the strongest contacts with the decedent and/or the agency where the IIM account is located. The existing BIA policy which assigns the probate to the agency with the strongest association with the decedent has been incorporated in the Final Rule at § 15.108. The most expedient manner for processing the probate package is to maintain contact with a family member of the decedent who has lived nearby the decedent and is familiar with the family relationships of the decedent. This standard was continued because a decedent may reside within the jurisdiction or have more contacts with an agency that does not necessarily have jurisdiction over the greatest amount of the decedent's trust property. The likelihood of an agency or tribe obtaining the most information about the decedent comes from an agency with the strongest associations with the decedent.

While § 15.202(g) allows the submission of a disclaimer of interest to be filed with the probate order, the Final Rule at § 15.109 provides that the probable heir or beneficiary may renounce their interest anytime up to the time a deciding official issues an order. The final regulation also incorporates the existing requirement in 43 CFR Part 4, Subpart D, that a disclaimer of any Indian interest requires a formal hearing before an ALJ.

Subpart C—Preparing the Probate Package

Summary of Subpart

This subpart addresses the requisite documents that must be contained in a complete probate package; the selection of the deciding official and notice of this decision to the interested parties; the contents of the notice; the identification of the processing times; the right of the interested parties to request a formal hearing with an ALJ; the circumstances under which the BIA will refer a probate package to an ALJ; and the procedures for the summary distribution of an estate containing only trust cash assets of less than $5,000.

Comments

We have revised this section to address similar comments on the selection of the BIA or OHA deciding official, and the notice of this selection. Incorporating many of the comments received, we provide in the Final Rule a more comprehensive notice scheme that identifies the probable intestate heirs; states whether a will has been submitted and provides a copy; and states whether any claims have been filed against the estate. In response to several comments, a new section at § 15.204 has been added to clarify that the probable heirs or beneficiaries may request a hearing before an ALJ at any time before a decision has been made by an attorney decision maker.

Many commenters were concerned over the clarity of the criteria used by the probate specialist to weigh in determining where to send the probate package. In response, we have added several new items in § 15.205(c) to clarify the circumstances under which the probate package should be sent to an ALJ and to provide consistency with other sections. These items include questions involving paternity, disclaimers of interest by an Indian heir or beneficiary, and any challenges to the jurisdiction of a court that has issued an order which has been used as a supporting document in the probate. A new subsection (d) has been added to clarify that approval of settlement agreements among heirs must be by the OHA. To address the concern that a probate specialist may not foresee all of the kinds of problems identified in § 15.205, the attorney decision maker must review the probate package and determine whether there are any issues of fact or law that would require a formal hearing. If so, then the attorney decision maker will immediately forward the case to the appropriate ALJ.

In response to several requests for more clarity, the process for summary distribution has been reorganized and placed at the end of this subpart. The summary process provides that the BIA deciding officials (the superintendent, field representative, regional director in cases of self-governance tribes, or attorney decision maker) may decide cases that contain only trust cash assets of less than $5,000. Relocating this section clarifies that the criteria for selecting the deciding official applies to the expedited intestate and testate summary distribution process. Section 15.206 provides for 30 days for the probable heirs and beneficiaries to request a formal hearing before an ALJ; 60 days after notice has been sent for the BIA deciding official to assemble the probable heirs or beneficiaries and conduct an informal hearing; and 30 days for the BIA deciding official to issue a decision after the informal hearing. Under § 15.206(c), the BIA

deciding official must apply §§ 15.302–311 to determine the distribution of the Indian estate. As recommended, the incorporation of these sections in the summary distribution process ensures that the same standards will be applied on a national scale by every BIA deciding official. Lastly, many respondents stated that they were confused by the differing appeal procedures of the decision of the superintendent and the attorney decision maker, and that the same appellate process should be in place for all BIA deciding officials. The Final Rule incorporates in § 15.206(d) a single appellate process for all BIA deciding officials.

Subpart D—Probate Processing, Claims and Distributions

Summary of Subpart

This subpart states when the BIA must forward the probate package to an ALJ for a formal hearing or to an attorney decision maker for an informal hearing. The choice of law to be applied to the facts of the Indian estate is defined to standardize the deciding official's application of law. This subpart also includes the process for submitting claims against the estate; allowance and payment of claims; priority of claims; reduction of claims; use of future income to pay claims; the payment of interest; the contents of the BIA deciding official's written decision/order; and the handling of the estate while an appeal is pending.

Comments

Numerous respondents requested that we clarify time frames and deadlines that the public and BIA must follow. Accordingly, § 15.301 imposes deadlines on the attorney decision maker for the regular processing of probate packages. The comments strongly recommend that if the attorney decision maker keeps the probate package, the attorney decision maker should hold informal hearings or conferences with the interested parties to identify any potential problems, will contests, or contested claims, which may prompt a formal hearing with an ALJ. Additionally, several commenters expressed a concern that the attorney decision maker should hold an informal hearing because many traditional Indian people may not feel comfortable or wish to make a written objection or request a formal hearing. We have accepted these comments. The Final Rule at § 15.301 incorporates the informal hearing procedure for all probate proceedings in the same manner as the existing regulations at 43 CFR 4.271.

Additional deadlines for the attorney decision maker have been incorporated in § 15.301 and § 15.310 to conduct an informal hearing and issue a decision. As many comments recommended, we will allow up to 180 days for an attorney decision maker to issue a decision.

The comments provide considerable discussion of what law is to be applied to determine heirs, approve wills, and determine whether or how to pay claims. Some tribes suggested that the Uniform Probate Code, a code adopted in portion by many states, be used on a national basis. Other tribes suggested that tribal law and tribal courts administer the Secretary's trust responsibility for the probate of Indian estates. Questions were raised about how conflicting intestate processes and land fractionation would be reconciled under tribal and state laws. Some commenters objected to the application of the inheritance laws of all fifty states. Others suggested that the law to be applied should be the law of the state where the IIM account is located. Some commenters stressed that there are also federal statutes that direct inheritance procedures in certain circumstances (e.g., Indian Land Consolidation Act) or for specific tribes (e.g., Standing Rock Sioux Tribe), and that the application of state probate law has been preempted in these circumstances. In addition to the statutory inheritance laws, many noted that the Secretary has approved tribal inheritance codes for several tribes.

These comments were considered in great depth. The Final Rule in § 15.302 continues the existing practice by acknowledging that, unless provided otherwise by federal law or by tribal inheritance codes approved by the Secretary, the state law of the decedent's domicile will determine the distribution of the estate.

There were nearly equal numbers of comments for and against the payment of any claims against an Indian decedent's estate. In particular, many were concerned that credit may not be extended if claims were precluded from Indian estates. The respondents opposing the allowance of any claims against the estate stated that in intestate situations an Indian decedent has not authorized any claims to be paid and that the assets of the estate rightfully belong to the heirs. Some tribes commented that the BIA should defer to any tribal law that addresses the filing and collection of creditors' claims. To the extent such requirements are included in a tribal inheritance code approved by the Secretary, the tribal laws will apply. Several commenters felt that trust assets should be used to pay debts only when there are no non-trust assets available. The Final Rule in § 15.303 allows the payment of claims out of trust cash assets only after evidence of exhaustion or non-existence of non-trust assets have been provided by the claimant.

Many respondents were concerned about the standards to be applied by the deciding officials in paying claims, as well as the priority of claims to be paid. Many stated that tribal claims should be a priority claim because tribes are generally the major creditor on Indian reservations. Many were concerned that failure to pay tribal loans by the estate would dramatically reduce the availability of credit to Indians. Several comments also stated that claims reduced to judgment in a court of competent jurisdiction should also be a priority. The Final Rule at § 15.305 incorporates both of these claims as priorities.

Comments from tribes and tribal advocates stated that the inclusion of the United States' claims as priority claim confers an economic benefit on the trustee that is inconsistent with its fiduciary duty. We agree. The trustee is obligated to preserve the estate for the benefit of the heirs and beneficiaries, and permitting the federal trustee to reach into the Indian trust corpus and seize property for his own benefit raises a serious conflict of interest and is inconsistent with fundamental principles of trust law. After serious consideration of the United States' role as trustee in light of potentially conflicting statutory provisions for collection of debts owed to the United States, we have deleted claims of the United States as a priority claimant against trust estates in § 15.305.

In response to many concerns that there was no provision for prorating general claims, the Final Rule at § 15.306 adds separate authority for the BIA deciding official to reduce or disallow both priority and general claims.

The BIA proposed to allow estates to remain open up to five years to pay creditors of the estate. In comparison, the current regulations at 43 CFR 4.251(d) allow an estate to remain open up to seven years. The majority of the commenters, however, objected to holding estates open for the payment of any claims, regardless of priority or general claims. Commenters stated that the United States, as trustee, has placed the creditors of Indian individuals in a better position than creditors of other non-Indian citizens by holding the estates open to pay creditor claims. After serious consideration and the weighing of comments, the Final Rule

deletes the proposed section that holds estates open to pay claims.

We received comments both in favor of and against the suspension of interest that may accumulate on a claim against the estate before it is paid. Comments favoring the payment of interest stated that non-payment would create another road block to an Indian's ability to obtain credit. Comments opposed to paying interest stated that the estate should be preserved for the heirs. The Final Rule at § 15.309 leaves in place the Proposed Rule declining to pay interest or penalties on any type of claim that may accrue after the decedent's death.

The Proposed Rule in § 15.310 addressed the responsibility of the administrator of the estate to file tax returns. Many commenters noted an administrator is not generally appointed for Indian estates. Many also noted that the Secretary, as trustee, is the functional equivalent of the administrator of the estate and therefore the heirs should consult applicable tax laws to determine if there is any tax liability related to the estate. In response to these comments, this section was deleted in its entirety.

Finally, many respondents stated that the official roles of the BIA and the OTFM should be specifically defined in executing probate cases decisions, including the distribution of income. In response, the Final Rule at § 15.312 provides that in executing probate decisions, the BIA changes land title records as appropriate and the OTFM processes payments from IIM accounts and the distributes income in accordance with the probate decision.

Subpart E—Appeals

Summary of Subpart

This subpart addresses the procedures for appeal of the decision of the BIA deciding official. The time for appeal, the status of the estate during appeal, and the standard of review of the decision are set forth in this subpart.

Comments

Many respondents stated that it was too confusing to have two separate appellate processes for the superintendents and attorney decision makers. Two separate procedures might result in the interested parties filing an appeal with the wrong entity, which would adversely affect the exercise of their right to appeal. The Final Rule incorporates this recommendation and establishes only one route of appeal for probate decisions issued by BIA deciding officials.

One commenter questioned the definition of ''known evidence'' in appeal proceedings. Further, the commenter was concerned that the right to appeal the decision of an attorney decision maker during the 60–day appeal period would not allow for the submission of new evidence, nor would it allow an appeal on the basis that known evidence was not included in the probate package. After careful consideration, the Final Rule at § 15.403(b)(1) and (2) includes clarified provisions for requesting after-deadline appeals based on new or unknown evidence.

Commenters suggested that the regulations specify that review of decisions of the attorney decision makers should be *de novo.* Due to the expedited procedure, informal hearing process, and absence of a full record to review, we accept this comment. The Final Rule at § 15.405 adds a new section for the *de novo* standard of review before the ALJ.

Subpart F—Information and Records

Summary of Subpart

This subpart includes general questions regarding *ex parte* communications with a BIA deciding official and the contact persons for inquiries about the status of a probate case, and new provisions addressing applicable records ownership and retention requirements.

Comments

We received several comments on the proposal that members of the public could not directly contact the attorney decision makers. The commenters generally recognized that there is clearly a need to avoid even the appearance of impropriety, but that trained adjudicative personnel understand and know the constraints of their offices. One commenter stated that no similar restriction is imposed upon agency superintendents who decide summary distributions. Other responses emphasized the need for the BIA to ensure that attorney decision makers are independent and impartial. After weighing these competing interests, we provide in the Final Rule at § 15.501 a single standard for all BIA deciding officials that precludes off-the-record communications with the attorney decision maker that might be construed as attempting to influence the substance of the final probate decision.

The comments suggested that references to the nationwide tracking system be deleted as the system was not in place and there is no date certain when the system would be in place. We agree. In the Final Rule we have deleted the references to the nationwide tracking system.

B. 25 CFR Part 114—Special Deposits

The purpose of this part was to set forth the conditions governing the deposit, investment, and distribution of principal and interest on trust funds held by the Department in special deposit accounts. In addition, this part provided procedures required for determination of ownership and distribution of funds which are on deposit in account 14X6703, ''Indian Moneys Proceeds of Labor Escrow Account—Pending Determination of Ownership.'' This special deposit account (IMPL Escrow Account) has been obsolete since September 30, 1987, as any unobligated balances were then deposited into miscellaneous receipts of the U.S. Treasury. Since this part dealt largely with this IMPL Escrow Account, the text of this part has been deleted in its entirety. Those provisions concerning other ''special deposit accounts'' are now referenced and explained in the newly revised part 115. It was the decision of the Department to move those provisions to part 115 because that part deals specifically with tribal and individual Indian trust funds. Part 114, therefore, has been ''reserved.''

Comments

No comments were received on the deletion of part 114 and its subsequent reservation within 25 CFR.

C. 25 CFR 115—Trust Funds for Tribes and Individual Indians

The purpose of this regulation is to describe how the Secretary, primarily through the BIA and the Office of Trust Funds Management (OTFM) within the Office of the Special Trustee (OST), carries out the trust duties owed to tribes and individual Indians in managing and administering trust assets for the exclusive benefit of tribes and individual Indian beneficiaries. The regulation also implements provisions of the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103–412, 108 Stat. 4239, 25 U.S.C. 4001 (Trust Reform Act). The Final Rule removes and reserves the existing part 114 (special deposit account provisions are incorporated into part 115) and amends and replaces part 115 in its entirety.

As the section-by-section chart above illustrates, there have been changes to the Final Rule from the Proposed Rule of July 14, 2000. These changes are, however, reasonably limited by the decision by the BIA to remove those proposed provisions that relate to Individual Indian Money (IIM) accounts

for adults and to continue in large part with the language in the current 25 CFR 115 that addresses adult IIM accounts. This action was taken in response to the many comments received from tribes and individual Indians who were concerned with the rule's proposed supervised and encumbered IIM account provisions. In order to incorporate many of the recommendations, we believe that the Administrative Procedures Act requires that we re-propose those sections of the regulation for further public comment. Therefore, most of those sections included in subpart D of the proposed rule have been removed from the Final Rule, and will be re-proposed at a later time. The IIM account sections proposed for minors and estate accounts have been retained in the Final Rule. These sections have been amended or clarified to reflect many of the comments received. We have responded to the comment that suggested the Final Rule identify the responsibilities of OTFM and the BIA in managing and accounting for Indian trust funds, by specifying, where possible, whether OTFM or the BIA has the responsibility for an action. For more specific delegations of Secretarial authority regarding trust responsibility, we encourage interested parties to look on our web page at www.doi.gov. With respect to the numerous comments requesting language concerning how we will collect trust revenue, we refer you to parts 162 and 166.

Subpart A—Purpose, Definitions and Public Information

Summary of Subpart

Subpart A addresses the purpose of the regulation in providing guidance for the administration and management of tribal and IIM trust accounts. Additionally, definitions and common terms used throughout the subpart are explained in some detail.

Comments

Comments were received that encouraged the BIA to look to private sector trust management systems as a model for the Department's trust management system. Respondents also requested that the BIA designate a position of ultimate responsibility for the administration of trust property. The Secretary has the ultimate responsibility for the administration of trust property and a system of trust management is already in place with oversight provided by the Special Trustee as designated in the Trust Fund Reform Act. Comments received regarding the addition of more terms or clarification of definitions were accepted with more detail where appropriate, e.g., trust resources and legal disability. There were numerous calls seeking clarification of the definition of an ''adult in need of assistance'' while others strongly objected to the requirement of a court order as the only method to allow supervision of an account. Those comments were accepted in part and the definition of ''adult in need of assistance'' was amended to allow a determination either (a) through a BIA administrative process that is based on a finding by a licensed medical professional or licensed mental health professional, or (b) by an order or judgment of a court of competent jurisdiction. The determination must include language that the individual is ''incapable of managing or administering his or her property, including his or her financial affairs.''

Subpart B—IIM Accounts

Summary of Subpart

As discussed above, the proposed rule had sections regarding adult IIM accounts that will require re-proposal of these provisions before we can issue a Final Rule. In the development of the provisions to be re-proposed, we will take into consideration comments received during the July 14–October 12, 2000 comment period. Subpart B of the Final Rule is largely the verbatim illustration of part 115 as it currently reads in 25 CFR. This subpart deals with specific provisions for particular tribes (Five Civilized Tribes and the Agua Caliente Band of Missions Indians); adults under legal disability; payment by other Federal agencies; restrictions; and appeals. However, provisions dealing with minors' accounts, estate accounts and the hearing process for restricting an IIM account (which were regulated in the current part 115) have been revised in accordance with the proposed rule and moved to the new subparts C, D, and E of part 115 of the Final Rule. In addition, provisions dealing with voluntary deposits and purchase orders (which were regulated in the current part 115) have been removed in accordance with the proposed rule and those sections are reserved for future use.

Comments

Comments on the Proposed Rule generally concerned the supervised account and encumbered account sections of the proposal. In particular, the respondents focused on the requirement of an order from a court of competent jurisdiction in order for the BIA to (1) supervise an IIM account or (2) encumber an IIM account to pay a debt to a third party. We plan to re-propose these sections. In the interim, to maintain some standard for dealing with adult IIM accounts (which is an ongoing BIA function), the BIA decided to retain the sections concerning adult IIM accounts in the current part 115 in this subpart B. The one change that was made in the Final Rule that affects the provisions retained from the current part 115 is the addition of a definition for an ''adult in need of assistance'' which has been revised from the proposed rule as discussed in the comment section of the Subpart A discussion above.

Subpart C—IIM Accounts: Minors

Summary of Subpart

This subpart deals in some detail with the procedures related to the management and supervision of a minor's account. A withdrawal from a minor's supervised account will be permitted only under a BIA approved distribution plan that provides for expenditures directly related to the minor's health, education, or welfare. A custodial parent, a legal guardian or a person who the BIA recognizes as having the control and custody of the minor, who withdraws funds from a minor's supervised account on behalf of the minor must account to the BIA with receipts for the use of those funds. The minor will not have access to information concerning his/her account. Procedurally, the provisions state that information about a minor's account will be provided to the custodial parent(s) or legal guardian(s) in a quarterly statement of performance; supervised accounts will be reviewed annually; and emancipated minors will have supervised accounts but will have access to account information and may receive funds on their own behalf.

Comments

One comment noted that the BIA should not require minors (or adults) with supervised accounts to have a ''legal guardian.'' We respond by reminding the public that all minor's accounts will be automatically supervised and that legally, a minor should always have a ''custodial parent'' or a ''legal guardian'', unless emancipated by a court of competent jurisdiction. There were comments that information about an account should not be provided to foster parents. We accepted those comments with revision. The BIA will only provide account information to parents, legal guardians and emancipated minors. We rejected those comments received that stated

that minors, specifically those who have reached the age of ten or thirteen, should have access to their account information. By law, minors are not legally capable of handling and managing their financial affairs. However, account information will be provided to emancipated minors although we do not accept the comment to allow emancipated minors unrestricted access to their account. All minors, including emancipated minors, will have supervised accounts. The BIA must be kept informed of the current address information for a minor, particularly if the minor's address is different from that of their parent or legal guardian.

A concern was raised about the necessity of obtaining receipts for all purchases made from those funds disbursed from a minor's supervised account. In addition there were comments suggesting that we differentiate between parents and legal guardians when requiring receipts for expenditures from a minor's supervised account. In response, we note that under a minor's distribution plan a parent or legal guardian will be treated equally and that receipts will be required for all expenditures unless a specific provision in the plan permits a minimal disbursement for a minor's miscellaneous expenditures to be made without requiring receipts for purchases. However, we stress that it is important for the integrity of the minor's supervised account that all withdrawals be appropriately documented. Comments were received that encouraged involvement of a parent(s) or legal guardian(s) in the development of the minor's distribution plan. We note that under normal circumstances, the parent(s) or legal guardian(s) will be involved in the development of both the evaluation plan and the distribution plan, and should sign the distribution plan acknowledging that they have read/reviewed the plan. In addition, parents and guardians are responsible for meeting the obligations detailed in those signed plans. Respondents were concerned about the potential necessity to distribute emergency funds from a minor's supervised account where that amount was not included in the distribution plan. We note that distribution plans may be amended at any time for emergencies or a change in circumstances, depending upon the needs of the minor. We accept in part the comments received to place a limit on the amount of funds to be distributed from a minor's supervised account and on the purposes for which a distribution may be made. Funds will not be automatically disbursed from a minor's supervised account to create a flow through account to anyone including a parent or legal guardian. Rather, the BIA will consider all available resources to meet the minor's needs when evaluating a request for funds from a minor's supervised account and in the development of the distribution plan. As a matter of policy, we strongly discourage the use of a minor's trust funds to meet the basic needs of a minor. All distributions must be made pursuant to the terms of an approved distribution plan and receipts for expenditures must be provided to the BIA. Finally, there were numerous comments that the BIA needs to recognize that there are informal custody arrangements and foster care placements for minors with IIM accounts and that there may be a need for disbursements from a minor's supervised account to a caregiver (referenced in comments as a ''minor's payee'') to help meet the minor's needs. We recognize that minor account holders may be cared for in informal living arrangements or in foster care situations, and that the Secretary may, in certain circumstances, need to recognize the caregiver and authorize limited disbursements that are in the best interests of the minor from the minor's supervised account. Other concerns raised included access by the caregiver to account information for a minor's supervised account. Account information will not be provided to the caregiver due to legal limitations such as the Privacy Act.

Subpart D—IIM Accounts: Estate Accounts

Summary of Subpart

This subpart reflects the notion in the current part 115 of providing for certain obligations and other expenditures that are attendant to an Indian decedent's estate. This is a new subpart in this Final Rule; however, its provisions were included in the Proposed Rule. The provisions in this subpart mirror the provisions contained within the Final Rule for 25 CFR part 15. Particularly, this subpart identifies when an estate account is established; how long an estate account remains open; refers to heirs to a decedent's account; establishes protocols for withdrawing monies prior to final probate; and dispositions to those having life estate interest in income-producing trust or restricted property.

Comments

Comments on Indian decedents' estates were captured in our discussions of part 15, Probate of Indian Estates above.

Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account

Summary of Subpart

This subpart outlines the notice requirement and hearing process (so-called ''Kennerly'' process) associated with placing a restriction on an IIM account under current §§ 115.102 and 115.104. This subpart outlines the circumstances under which the BIA will place a restriction on an IIM account; information that must be included in a notice to restrict an account; time lines for requesting a hearing to challenge BIA's decision to restrict an IIM account; pendency of a restriction during an appeal; and remedies available when an administrative error has been caused by BIA or OTFM.

Comments

We received several comments on this subpart, including that the BIA should only require the ''Kennerly'' process, described in the final rule in this subpart, for restricting an IIM account if there is no valid non-BIA proceeding. We note in response that the notice requirement has been in place in the current regulation for the past 40 years and, further, we must provide due process to all account holders before we take action against their account. We believe that due process is served (and our trust responsibility properly exercised) through the use of the notice and hearing process. Accordingly, we did not accept this comment for revision in the Final Rule. Other comments recommended that we not place a restriction on an account until after the hearing process is completed; that we add five (5) additional days to the time periods proposed for placing the restriction on an account; and that we extend the time period in which to request a hearing from 40 days to 90 days. We did not accept these comments because due process is provided within the time periods proposed. The funds at issue when an account is restricted will be protected and will not be disbursed until after the hearing process and appeal period, if any, have ended. One comment stated that we should explain that social services staff should not have the responsibility for collecting debts from an IIM account. In response, we note that social service providers are only involved in the development of a distribution plan where the BIA's decision is to supervise an IIM account, not when the account is to be encumbered. Finally, there were comments involving BIA's recognition

of child support awards. Concerns included honoring excessive awards; limiting amounts awarded by a court of competent jurisdiction; and other comments stating that there should be no discretion to reduce the amount of a child support award to be paid from an IIM account. Consistent with federal policy, we believe that parents are responsible for providing support for their children and that child support awards are to be determined by courts of competent jurisdiction. If there is a dispute regarding a child support award and we are provided with notice of an appeal of a child support award, upon request we will postpone the hearing.

Subpart F—Trust Fund Accounts: General Information

Summary of Subpart

This subpart discusses the sources of trust funds that may be deposited into the Secretary's trust funds management system. Particularly, this subpart explains which trust funds may be accepted for deposit into a tribal or an IIM account; the process for depositing money into an account; the requirement that the Secretary must conduct an annual audit on trust funds; and an explanation of how trust funds deposited in a trust account earn income.

Comments

Several respondents suggested that this subpart should clearly state what money would be accepted into IIM accounts while others requested that we accept specific types of non-trust monies. In response, we have described in § 115.702 what sources of trust funds may be accepted for deposit into a trust account. We note that the BIA must have specific authority to accept non-trust monies into a trust account. Therefore, we will not accept pension funds, retirement funds, conveyance fees and child support awards into trust as requested. Some respondents were concerned that an annual audit on trust accounts was not required and others wanted the inclusion of language specifying the accounting standards to be used in the audit.

The Trust Reform Act requires that an annual audit be conducted on trust funds. Prescribed auditing standards will be used in conducting those audits. In addition, a number of comments concerned the timeliness of deposits of trust funds received by the Secretary into a trust account. Deposits received by the Secretary on behalf of a tribe or an individual will be deposited into a trust account within twenty-four hours, or no later than the close of business on the next business day following the receipt of funds at a location with a designated federal depository. Another respondent stated that to require a compacting tribe to make deposits payable to the Secretary on behalf of tribes or individual Indians within a twenty-four hour time period would create problems because many tribes are isolated, live hours away from banks and ''it is not always practical to do banking but once a week.'' We respond that where a tribe has compacted or contracted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds payable to the Secretary on behalf of the owner of the trust asset pursuant to a contract that specifies that payments are to be made to the Secretary, the tribe must follow the same standards as the Secretary under § 115.708 for the deposit of the trust funds into a trust account. We also received an inquiry as to whether interest earned on trust funds are automatically reinvested. Interest earned on trust funds is automatically reinvested. Although we called for comments regarding income derived from tribal operations, we do not address this issue in the Final Rule. We have provided a list of all sources of trust funds that will be accepted by the Secretary for deposit within the trust fund management system in § 115.702. Further, a tribe or individual Indian will not be allowed to deposit trust funds received through direct pay into a trust account, except when provided by law under 25 U.S.C. 3109. However, we have amended the regulation to allow the Secretary to accept for deposit trust funds made payable to the owner of the trust asset (direct pay) when submitted by the payor (e.g., lessee, permittee) when the payor presents evidence (i.e., an envelope marked by the United States Post Office ''undeliverable'') that shows attempted delivery to the tribe or individual owner of the trust asset. We are unable to respond in the regulation to the request for a listing of OTFM offices, however, a current list of OTFM offices may be obtained from Department's web page at www.doi.gov. There were several comments requesting that we identify the tax status of, and certain agency exemptions for, trust funds. We are unable to incorporate these recommendations as this rule regulates the Department of the Interior and not other federal agencies that have a trust responsibility to tribes and individual Indians. Comments also indicated that there was general confusion about when we would accept funds from another federal agency on behalf of an individual Indian. By law, we are only able to take funds from another federal agency when the federal agency has appointed the BIA as the representative payee to receive benefits on behalf of an individual Indian because there is no legal guardian to be appointed as representative payee.

Subpart G—Tribal Accounts

Summary of Subpart

This subpart discusses the trust funds that are deposited into tribal accounts and their management by the BIA. Particularly, the subpart outlines when, and how, OTFM opens a tribal account; information regarding a statement of performance and when it is sent to a tribe; which trust funds may be deposited; tribal investments and how they are managed; procedures for withdrawing tribal trust funds; and what happens to unclaimed per capita funds.

Comments

Respondents suggested that income under a 25 U.S.C. 450f *et seq.* contract or compact should be able to be deposited into tribal trust accounts so that they may be invested and the interest earned reinvested daily. Any funds appropriated to administer a 25 U.S.C. 450f *et seq.* contract or compact are not trust funds, and cannot be deposited into tribal IIM accounts. If trust funds are to be deposited into a trust account, the contract for the sale or use of trust lands or resources (e.g., lease, permit) must specify that payments be made payable to the Secretary on behalf of the trust owner regardless of whether the Secretary manages the program or a tribe has compacted or contracted with the Secretary to operate the federal program. If a tribe that is compacting or contracting the federal program which administers/manages the tribe's contract involving trust assets receives trust funds derived from those trust assets made payable to the Secretary, then the contracting or compacting tribe must deposit those funds into a Treasury General Account. Any payments made payable to a tribe (direct pay) will not be accepted for deposit into a tribal trust account.

Another comment suggested that time lines should be prescribed for processing tribal account withdrawals. We have provided time lines in response to this comment. We are unable to accept the comments requesting that we give tribes authority over trust fund investments. By law, the Secretary is responsible for making all

trust fund investment decisions. However, we do accept with revision those comments requesting consultation with tribes on an annual basis because some tribes may not wish to meet with OTFM on an annual basis. Upon request by the tribe, OTFM will consult with a tribe annually regarding investments of tribal trust funds. Many respondents were concerned about a tribe requesting the return of unclaimed per capita funds. Unclaimed per capita funds will not automatically be returned to a tribe after six years. By law, a tribe may request, but is not required to request, the return of unclaimed per capita funds after six years. A decision to make a request for return of per capita funds is an internal tribal decision. Funds not returned to a tribe will remain in an ''unclaimed per capita account.'' We have decided to remove several of the provisions regarding tribal budgets and budget approvals in response to comments that these sections were confusing and seemed to add requirements that were not required by law. Tribes must continue to present budgets for the use of trust funds to the Secretary when required by law. Tribes are also encouraged to meet with OTFM to discuss cash flow needs so that OTFM may make informed investment decisions regarding tribal trust funds.

Subpart H—Special Deposit Accounts

Summary of Subpart

This subpart, which replaces part 114, limits the types of monies that may be deposited into special deposit accounts. Particularly, this subpart includes an explanation of who receives the interest earned on trust funds in a special deposit account; when trust funds in a special deposit account are distributed to the owner of the funds; whether administrative or land conveyance fees paid as federal reimbursements can be deposited into special deposit accounts; and what other types of monies may be deposited into special deposit accounts.

Comments

We received one comment on this section which requested that conveyance fees be allowed for deposit into special deposit accounts. In response, we restate that the Secretary only has authority to accept trust funds into a trust account. Conveyance fees are not trust funds.

Subpart I—Records

Comments

As previously noted, the provisions addressing the ownership and maintenance of trust records associated with the performance of this part, contained in subpart H of the Proposed Rule, have been modified in response to comments. These provisions are found in subpart I of the Final Rule.

D. 25 CFR Part 162—Leases and Permits on Indian Lands

The purpose of this regulation is to describe the authorities, policies and procedures the BIA uses to grant, approve and administer surface leases and permits on certain Indian land and Government land. It revises, amends and replaces the existing part 162 in its entirety, and implements the American Indian Agriculture Resource Management Act (AIARMA), 25 U.S.C. 3703, *et seq.* with regard to leases on Indian agricultural land. With respect to those regulations governing the administration of leases on specific reservation lands, the Final Rule will not effect any substantive changes, but renumbers those sections. The section pertaining to the Colorado River Reservation has been removed at the request of the tribe.

This regulation balances the responsibilities the Secretary has as trustee of Indian land with the need for tribes and individual Indian landowners to exercise maximum control over their Indian agricultural lands. These regulations will apply to all leases in effect on the date the regulations take effect.

General Observations Regarding Changes From Proposed Rule

The recent enactment of the ILCA Amendments affects the management of Indian lands held by multiple Indian landowners, including both tribes and individual Indians. The policies introduced by this legislation require extensive revisions to the Department's regulations affecting the leasing of individually owned allotted lands. Specifically, section 219 of the ILCA Amendments addresses all leases or other agreements affecting individually owned allotted lands or any other trust or restricted lands. Because section 219 of the new statute expressly provides that it does not amend or modify the AIARMA, the Department is now issuing final regulations in part 162 that address agricultural leasing under the authority of the AIARMA. The Department will extensively revise the regulations governing non-agricultural leases at a later date. Because the ILCA Amendments also affect tribes that own fractional shares of trust or restricted lands, the Department will not finalize new regulations affecting non-agricultural leasing on tribal lands until the full extent of the ILCA Amendments is determined and new regulations are re-proposed and additional tribal consultations are conducted.

Nevertheless, leasing must be able to continue even on lands that are subject to the new provisions of the ILCA Amendments. For these lands, most of the provisions of the superseded version of part 162 are republished in subpart F, modified such that provisions that conflict with the new definitions or agricultural leases (now covered in subpart B) have been deleted. Subpart F will be replaced with future rules, as described above. Additionally, in response to many comments calling for the BIA to strengthen its enforcement of leases, sections are included in subpart F that address the BIA's duties to collect delinquent lease payments and enforce lease violations on trust and restricted lands. These sections are modeled directly on the related sections in subpart B. Both the general provisions applicable to all leases and the new subpart F note that, if any of the provisions of these regulations conflict with the ILCA Amendments, the statute will govern.

A few respondents objected to the implementation of the AIARMA in the context of the part 162 regulations, requesting that separate regulations be issued. We reject this comment. Because agricultural leases are a specialized form of the BIA's overall leasing program and are administered under the authority of the AIARMA in combination with the Indian Long-Term Leasing Act, 25 U.S.C. 415, there is no need for stand-alone AIARMA regulations.

Agricultural leases are administered in a manner that is significantly different from other types of leases on trust and restricted Indian lands, such as business and residential leases. The Department has responded to the majority of comments addressing both the proposed leasing and grazing regulations by significantly restructuring and clarifying the leasing regulations in order to address agricultural leases independently. Separate subparts C and D, for residential and business leases, respectively, are identified and reserved for future rulemaking after the impact of the ILCA Amendments is assessed.

The process of separating provisions pertaining to agricultural leases from those that govern residential and business leases, and the consideration of public comments as described below, has resulted in extensive refinement, clarification and restructuring of the agricultural lease provisions. In its final form, the provisions pertaining to agricultural leases do not closely resemble the final grazing regulations at part 166 as much as they did in the

proposed regulations. Every effort has been made to ensure that both the agricultural lease provisions of part 162 and the grazing regulations at part 166 are substantively the same, to the greatest extent possible and practicable, insofar as they implement the provisions of the AIARMA. Additionally, specific provisions addressing trespass under the AIARMA that were contained in subpart L of the Proposed Rule have been deleted in favor of cross-referencing to the AIARMA trespass provisions in part 166.

In response to the majority of comments, the final agricultural leasing provisions reflect significant deference to tribal and individual Indian landowners, such as deferral to tribal laws and requirements for consultation between the BIA and the Indian landowner on all facets of management and enforcement activities, including enforcing lease and permit violations and trespass. The final regulations also provide more flexibility to the Indian landowner to negotiate, with the assistance of the BIA, desirable and favorable provisions in their leases. The BIA will provide subsequent guidance, including model lease language, to assist Indian landowners in negotiating their own leases.

The final leasing regulations provide for more pervasive deference to tribal law and tribal self-determination, not only as required under the AIARMA for grazing and agricultural leasing (subpart B), but also in the provisions that will apply to general leasing activities (subpart A). Several tribes and the NCAI pressed for more complete deference to tribal leasing decisions than the Department believes can be accommodated under current law, notwithstanding the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 *et seq*. For example, the NCAI requested that the Department adopt regulations that would provide for routine approvals of tribal short-term leases. However, existing statutory authorities require meaningful review by the Secretary in carrying out the trust responsibility. Moreover, a rule providing for such routine approvals of tribal short-term leases would fail to take into account those tribes that do not yet have sufficient policies and procedures in place to ensure that the trust assets are properly managed.

Nevertheless, the Department is committed to speeding up its review, approval, administration and enforcement of leases. Throughout these regulations, reasonable time frames for action by the BIA have been inserted to strengthen the management of leases. For the reasons stated in the preceding paragraph, under existing law we must reject those comments seeking automatic lease approvals if the time frames are not met.

A few commenters, particularly the NCAI, requested that the BIA identify with specificity the individual official responsible for taking action or making a decision in any given instance. We reject these comments, as we believe such matters are properly addressed in Bureau and Departmental delegations of authority, which may be changed as work load and other factors demand. To commit to such delegations in regulations would inflexibly bind the BIA and Department from addressing pressing workforce needs in an efficient and effective manner. The NCAI further requested that the BIA adopt a ''trust officer'' model for managing trust land, similar to that used in the private sector. We believe such a model already exists at the individual BIA agency and field office level; the agency superintendent and field representative effectively serve as the responsible ''trust officer'' responsible for the administration of trust land within their jurisdiction.

Consistent with the majority of comments, the final regulations continue to provide for direct payment to Indian landowners for leases on their trust lands, as long as direct payment is a specific term in the lease or permit. In order to ensure that the Secretary can properly enforce lease and permit payment terms, leases and permits authorizing direct payments must require that tenants maintain documentary proof of payment. Several respondents suggested that the Secretary should require that proof of payment be submitted to the agency with every direct payment. However, such a requirement would be inconsistent with historic practice and would result in an unsustainable drain on agency resources. Absent a system for tracking such notices, the requirement would not produce the desired goal of ensuring prompt enforcement of payment of trust income. Further, it would be far less effective than relying on the Indian landowner to advise the BIA immediately upon discovering that a payment has not been made and requesting enforcement assistance. Therefore, the final regulations provide that the Indian landowner notify the Secretary that a required payment has not been made. The Secretary then will take prompt and effective action based on that specific information. The Department continues to recognize the advantages to Indian landowners of direct payments. However, this advantage necessarily brings with it increased responsibility of Indian landowners to assist in the enforcement of non-payment of their leases and permits. With this regulatory change, Indian landowners who opt for and negotiate direct payments are clearly notified of their responsibilities to notify the BIA of late payments. Similarly, tenants are notified both by these regulations and in the lease itself that documentary proof of payment will be necessary to demonstrate that a payment was timely made in the correct amount due, should there be any question about a payment.

The Department is not taking on any obligation to manage or account for funds paid directly to Indian landowners that are not actually held in trust by the United States. This is consistent with section 102(a) of the American Indian Trust Management Reform Act of 1994, 25 U.S.C. 4011. Although we invited the public to comment on the question of accounting for direct payments, no specific recommendations were received beyond a general recommendation to collect proof of payment.

In both general lease and permit enforcement, as well as in trespass enforcement, the final leasing regulations reflect the suggestions of a large number of commenters to establish reasonable time frames in which the BIA will take appropriate enforcement action, and to reduce the amount of procedural steps necessary for effective enforcement. Significantly, the final rule includes new provisions identifying the BIA's responsibility for collecting delinquent rent payments.

Subpart A—General Provisions

Summary of Subpart

Subpart A addresses the purpose and scope of part 162 and describes the general authorities, objectives and policies the BIA uses to approve, grant, administer and enforce surface leases of Indian land. This subpart also defines key terms used throughout part 162 and identifies the land, interests in land, and types of leases covered by part 162. This subpart describes how tribal laws will apply to leases, and how records are maintained that document the leasing of trust and restricted lands.

Comments

Subpart A of this Final Rule now includes new provisions addressing the scope of part 162, policy statements, and other general provisions not found in the Proposed Rule. As noted above, many commenters suggested that the Final Rule include separate standards

for different types of leases, including agricultural, business and residential leases. In response, this Final Rule provides for separate subparts for agricultural leases (subpart B), residential leases (subpart C), and business leases (subpart D). Subparts C and D are reserved for publication at a later date. Accordingly, we will not address any of the provisions in subpart E or elsewhere in the Proposed Rule concerning residential or business leases, or the comments relating to those provisions.

Section 162.101 of the Final Rule contains definitions of key terms used throughout part 162. In response to many comments, we have clarified and streamlined most of the definitions in concert with those used in the final rules at parts 151 and 166. We have added definitions for day, emancipated minor, fee interest, immediate family, interest, minor, mortgage, remainder, surety, and tenant. Several confusing terms have been deleted or revised. For example, we have deleted specific definitions of appeal bond and surety in favor of a single definition of bond. In response to many comments, we generally have discontinued using the term lessee in favor of tenant.

Several respondents raised questions about the scope of the Proposed Rule. In response, § 162.102 clarifies that only land and land interests held in trust or restricted status are covered, and § 162.103 defines the types of agreements covered. Section 162.102(b) sets forth the general rule with respect to the leasing of life estates and remainder interests, with a cross-reference to 25 CFR Part 179. The information in subpart J of the Proposed Rule concerning fee interests or ''non-trust'' interests has been relocated to § 162.102(c) of this Final Rule. In addition, the provision in § 162.70 of the Proposed Rule which recognized that tribes could lease tribal land without BIA approval under federal charters has been moved to § 162.102(d) of this Final Rule. Finally, § 162.102(e) of this Final Rule notes that to the extent part 162 conflicts with the recently-enacted ILCA Amendments, the provisions of the ILCA Amendments will govern. In § 162.103, the Final Rule expands the cross-references in § 162.1(a) of the Proposed Rule, to distinguish the surface leases and permits covered by part 162 from other transactions involving trust or restricted land.

Many questioned whether the individual Indian landowners of undivided interests in fractionated tracts would need leases from their co-owners (i.e., ''owner's use''), before taking possession. In response, § 162.104(b) clarifies that an Indian landowner of an undivided interest may not take possession without a lease unless the Indian co-owners give their permission. We have not accepted the requests to eliminate the owner's use provision in its entirety. This provision is necessary to ensure protection for, and to foster cooperation and negotiation among, all Indian co-owners.

Several commenters also expressed confusion as to how the trespass rules in subpart L of the Proposed Rule would apply to leases. As previously noted, some suggested that failure to pay rent be treated immediately as trespass. In response, the special provisions on trespass have been removed, but those provisions (as still incorporated in part 166) have been cross-referenced in §§ 162.106(b) and 162.256 of this Final Rule. We have rejected the comments requesting that we treat non payment as trespass, based on the availability of contract remedies prior to the cancellation of the lease. We have noted, however, that we will treat any possession of Indian land without a lease as a trespass, whether or not it occurs it occurs on Indian agricultural land.

Several respondents indicated that the Proposed Rule did not sufficiently define the BIA's responsibilities in the leasing of trust and restricted land; promote tribal self-determination through the negotiation of tribal leases and the administration of reservation lands under self-determination contracts or self-governance compacts; or support tribal sovereignty through the formal recognition of tribal laws and leasing policies. We have accepted these comments. Accordingly, §§ 162.107–162.108 define our objectives in granting or approving leases involving trust or restricted land and our responsibilities in the administration and enforcement of such leases, as noted above. The policies expressed in §§ 162.107–162.108 are intended to reflect our strong support for the rights of Indian landowners, tribal governing authority, and tribal administration of BIA programs. In § 162.109(b) we expressly recognize that tribal laws will broadly apply to all land under tribal jurisdiction, and generally allow tribal laws to supersede or modify the regulations in part 162 with respect to leases of tribal land.

In the Proposed Rule, we invited comments with respect to the distribution of rents derived from unitized leases comprised of multiple tracts with different Indian landowners. In response to the small number of comments received, we have combined §§ 162.17 and 162.102 of the Proposed Rule in § 162.105 of this Final Rule. We continue to provide that rents will be distributed based on the size of the Indian landowner's interest in proportion to the acreage in the entire lease tract, unless the lease provides otherwise. We also clarify that minimum Indian landowner consent requirements will apply to each tract separately rather than to the unitized lease tract as a whole.

Finally, to be consistent with the regulations published under parts 15, 115, and 166, we have added two sections addressing the maintenance of records relating to probate cases. These provisions, §§ 162.111 and 162.112, replace subpart M of the Proposed Rule.

Subpart B—Agricultural Leases

Summary of Subpart

Subpart B, consisting of six groupings of sections, governs agricultural leases on Indian lands. Under ''General Provisions'' are sections addressing the applicability of tribal laws and policies to agricultural leases. The sections under ''How to Obtain a Lease'' set forth procedural requirements including who can grant agricultural leases, how the BIA approves such leases, the documentation and recording requirements for such leases, and the effective dates of leases and BIA decisions. ''Lease Requirements'' includes sections that describe mandatory lease provisions, the amount of rent to be paid and the manner of payment (including late payments and penalties), improvements, bonds, and insurance. Under ''Lease Administration'' are provisions governing administrative fees and amendments, assignments, subleases and mortgages. ''Lease Enforcement'' includes sections identifying the BIA's responsibilities and time frames for collection of delinquent rent payments and other violations of agricultural leases, lease cancellation procedures, emergency action and inspections by the BIA.

Comments

General Provisions

A large number of commenters questioned provisions in the Proposed Rule that implemented the AIARMA. As we noted above and provide with respect to part 166, we have rejected the comments suggesting that special AIARMA regulations be promulgated independent of the BIA's leasing and grazing programs. As noted, the AIARMA-based trespass provisions in subpart L of the Proposed Rule have

been removed, leaving appropriate cross-references to 25 CFR Part 166. Many of the respondents were also concerned about the applicability of tribal laws and leasing policies. As indicated above, we have replaced § 162.4 of the Proposed Rule with the more specific § 162.109 in this Final Rule, to clarify that tribal laws will broadly apply to all types of leases, but will supersede or modify our regulations only in limited circumstances.

We have moved the AIARMA-based provisions found in §§ 162.5–162.9 and § 162.11 of the Proposed Rule to this heading in subpart B of the Final Rule. Consistent with the AIARMA, section 162.200 provides that subpart B will apply not only to agricultural leases, but also to business leases that support the Indian agricultural community. Section 162.201 provides that lands be managed in accordance with any agricultural resource management plan that have been adopted. As required by AIARMA, § 162.201(c) broadly authorizes waivers of regulations that are inconsistent with any agricultural resource management plan.

The provisions in §§ 162.5 and 162.9 of the Proposed Rule, relating to the implementation and enforcement of tribal laws affecting agricultural land, have been combined in § 162.202 of this Final Rule. In response to comments, § 162.202(b)(3) includes provisions that clarify that BIA appearances in tribal forums may be limited by Departmental regulations at 43 CFR Part 2, and by provisions in the AIARMA to preserve the sovereign immunity of the United States and limit tribal court review of BIA actions. Section 162.202(c) broadly authorizes waivers of regulations that are inconsistent with tribal laws.

Section 162.6 of the Proposed Rule, addressing when our standard regulations can be superseded or modified by certain types of tribal leasing policies, has been slightly modified and redesignated as § 162.203. It should also be noted that the broad AIARMA provision authorizing our approval of an agricultural lease of tribal land at any rate determined by tribal governing body has been incorporated in this Final Rule through standard regulations, at § 162.222(b), as well as through tribal policies made applicable under § 162.203 of the Final Rule. Although a number of commenters requested guidance as to how a superseding leasing policy might be adopted by a tribe, the Final Rule leaves the matter to the discretion of each tribe. The notice provisions in § 162.8 of the Proposed Rule have been clarified and extended to Indian landowners in § 162.204. Although some commenters objected to any notice requirement being placed on tribes, we continue to require that tribes provide us with notice of any tribal law or leasing policy that supersedes or modifies any of the regulations in part 162, so that we may provide the notices required by AIARMA. Finally, § 162.205 clarifies the provisions in § 162.7 of the Proposed Rule, authorizing individual Indian landowners to exempt their land from a leasing policy which supersedes or modifies one of our standard regulations prohibiting tenant preferences, requiring a bond, or guaranteeing three months notice before we grant a lease. Consistent with the AIARMA, we continue to require that at least 50% of the Indian landowners request the exemption and add a new provision that the exemption be requested each time a lease is granted or approved. Although numerous commenters objected to the exemption provision, these exemption rights are expressly provided for in AIARMA and have thus been retained in this Final Rule.

How To Obtain a Lease

In response to many comments, we have clarified the circumstances under which leases can be obtained through negotiation or advertisement or granted or approved without an appraisal or other documented valuation. In doing so, we have reduced and consolidated the provisions in subpart C of the Proposed Rule into §§ 162.206 and 162.212, respectively, in this Final Rule. Further, we have consolidated the provisions subpart D of the Proposed Rule into §§ 162.207–162.210 of the Final Rule, with several corrective amendments. The provisions relating to fair annual rental determinations, proposed in §§ 162.150–162.151 of the Proposed Rule, have been consolidated in § 162.211 of the Final Rule, with a clarification that fair annual rental determinations are not needed in cases where a lease may be approved at less than a fair annual rental, unless the Indian landowners request such a determination. We have also clarified that the BIA will determine fair annual rental value for leases on Indian lands by appraisal, advertisement, competitive bidding, or any other appropriate method that complies with the USPAP. The BIA does not intend to specify in part 162 the particular method for appraising Indian land; rather, ensuring flexibility in choosing an appraisal method allows the Secretary to most effectively discharge his responsibility as trustee.

Many respondents questioned the proposed provisions that addressed the granting of leases on fractionated tracts, including ''owner's use'' leases. In response, the provisions in the Proposed Rule that indicated that land being used by an Indian owner of a fractional interests could be leased to another party have been modified. Section 162.209(b) provides that we will not exercise our authority under 25 U.S.C. § 380 to grant a lease on behalf of all of the Indian owners of a fractionated tract where the Indian co-owners have given one of the Indian landowners permission to possess the tract without a lease.

A number of commenters objected to the provisions in § 162.12 of the Proposed Rule that identified the factors to be used in applying the ''best interest'' standard of review for lease approvals. Some noted that the BIA incorrectly applied 25 U.S.C. § 415(a). Others requested that the BIA consider additional factors beyond those provided in the statute. In response, § 162.214(a)(3) provides that we must assure ourselves that adequate consideration has been given to the five factors identified in 25 U.S.C. § 415, consistent with the statutory language. A sixth, non-statutory factor was suggested by the NCAI and identified in the Proposed Rule. This factor would require that we consider any tribal assessment of potential impacts on tribal culture and sovereignty. We received contradictory objections to this provision as being at once too paternalistic and yet too deferential to tribes. Because the sixth factor pertains primarily to long-term, business and residential leases, we have deleted it from the Final Rule for agricultural leases.

Many commenters requested that we include a time frame in which we must make a decision whether to grant or approve a lease. In response, § 162.214(b) requires action within 30 days, so long as the lease is in a form which has been previously accepted or approved, and all of the requisite supporting documents have been received. Those supporting documents are generally described in § 162.213, including a cross-reference to the bond requirement not found in proposed § 162.13, the corresponding provision of the Proposed Rule.

Many questions were raised about the effective dates of our decisions to grant or approve leases. With respect to the effective date of an agricultural lease, and the relation between the effective date of our decision to grant or approve the lease and the commencement date of the lease, the provisions in §§ 162.12(c) and 162.28 of the Proposed Rule have been consolidated and clarified in

§ 162.215 of the Final Rule. This section confirms that our decision can be made retroactively effective.

In response to numerous comments, we have significantly revised the applicability of the appeals process for decisions to grant or approve leases. Contrary to § 162.75 and subpart I of the Proposed Rule, § 162.216 makes a grant or approval decision effective immediately, notwithstanding any appeal that may be filed under 25 CFR Part 2.

Finally, we received many inquiries as to why we proposed only to record leases greater than one year in duration. We agree with those concerns and will record all leases. The Proposed Rule omitted mention of recording permits; the final rule provides that all permits will be recorded, as well. The provisions in §§ 162.14–162.16 of the Proposed Rule have been consolidated and clarified in § 162.217, expressly exempting permits from the recording requirement.

Lease Requirements

We received many comments requesting that the BIA be less prescriptive in mandatory lease requirements and allow for greater flexibility in negotiating leases that are favorable to the Indian landowner. We have balanced these concerns against the need for mandatory provisions that provide sufficient protection of Indian landowners. Accordingly, under the heading ''Lease Requirements'' are minimal mandatory provisions for agricultural leases, as well as provisions addressing matters that we strongly encourage be negotiated.

The mandatory provisions listed in § 162.26 of the Proposed Rule have been clarified and streamlined in §§ 162.219 and 162.220 of this Final Rule. Many respondents criticized the provisions relating to the description of the leased premises, as found in §§ 162.20 and 162.26(i) of the Proposed Rule, as being too restrictive for business purposes. We agree with these comments. In consolidating these sections in § 162.221 of the Final Rule, we state a clear preference for public or private surveys, but will accept any legal description that adequately identifies the property.

As previously noted in the general discussion of the changes to part 162, we have responded to the numerous comments received regarding direct rent payments. We are retaining the authority for direct payments and requiring tenants to retain documentation evidencing proof of payment. The provisions in §§ 162.41–162.42 and §§ 162.100–162.101 have been consolidated in § 162.226 of this Final Rule.

Section § 162.225 addresses late payments, combining §§ 162.34 and 162.36–162.37 from the Proposed Rule. In response to the majority of comments, this section provides that interest will begin to accrue immediately after a payment is missed, and that negotiated late payment penalties also may be imposed. Section 162.227 allows payments made directly to the Indian landowners to be made by any method specified in the lease. This section also allows payment by personal or business checks, in accordance with virtually every comment received on this issue. To minimize the risk to Indian landowners where such checks are dishonored, we have added a provision in § 162.248(d) stating that a lease is violated by the dishonoring of a check, and future payments must be made by one of the alternative methods identified in § 162.227.

Several commenters requested that the BIA allow greater flexibility in requirements for adjusting rental payments over the course of a lease. In response, § 162.223 provides for a minimum of one adjustment during the term of an agricultural lease, but Indian landowners may negotiate additional adjustments. We received few comments addressing the adjustment method and have clarified that the parties may negotiate the method of adjustment, with assistance from the BIA.

A number of comments also addressed the maximum lease term for agricultural leases. We have clarified this information in § 162.229, consistent with the AIARMA, to state that the maximum term for an agricultural lease is ten years, unless otherwise provided by law, and unless substantial investment in improvement of the land justifies extending the term up to 25 years.

Most commenters who addressed lease amendments, assignments, subleases, and leasehold mortgages requested that the BIA approve every such transaction. We agree that, with respect to agricultural leases, such approval continues to be necessary to protect Indian landowners. Section 162.230 has been amended accordingly, combining provisions in found in the Proposed Rule at §§ 162.21–162.25 and 162.87–162.90.

Many respondents requested additional clarity in the treatment of improvements to agricultural lands, both during and after the term of a lease. We have responded to these comments in §§ 162.232 and 162.233, by providing for negotiation of ownership of improvements in the lease, with suggestions for favorable terms, and provisions for BIA enforcement.

Finally, in response to many comments seeking strengthened remedies protecting Indian landowners in the event of lease violations, § 162.240 of the Final Rule amplifies the rights of Indian landowners to negotiate remedies that may be applied in addition to those taken by the BIA, including the possibility that the Indian landowner may cancel the lease. We also encourage Indian landowners to address the matter of tribal court jurisdiction for the resolution of lease disputes involving such negotiated remedies. However, this section provides that the BIA may not be bound by such decisions, but we generally will defer to tribal court proceedings as appropriate.

Lease Administration

Some commenters found the organization of the Proposed Rule confusing because it failed to distinguish clearly between the review and processing of a lease, and subsequent lease amendments, assignments, subleases, and leasehold mortgages. In response, we have created this grouping of sections entitled ''Lease Administration,'' which combines the provisions relating to the review and processing of amendments, assignments, subleases, and leasehold mortgages, as contained in subpart B of the Proposed Rule, with the provisions relating to administrative fees, proposed in subpart G.

With respect to administrative fees specifically, several commenters felt that the provisions in subpart G of the Proposed Rule were unclear as to the authority of tribes to charge and collect such fees, whether or not the tribe is administering the leasing program under a self-determination contract or self-governance compact. In response, § 162.241 establishes a standard 3% fee, subject to modification by a tribe or a discretionary waiver by us, and clarifies who pays the fee, why it is paid, and when it is subject to tribal modification. This provision has a consistent counterpart in part 166. As indicated above, the provisions in § 162.114 of the Proposed Rule, relating to the payment of other types of fees and charges, have been relocated to § 162.228 of this Final Rule.

Many respondents noted that subpart E of the Proposed Rule, which was intended to apply only to business leases, contained general provisions applicable to other types of leases. We believe the reorganized structure of part 162 will address these concerns. As

noted above in the general discussion of these Final Rules, numerous commenters suggested that the Final Regulations include time frames binding the BIA, with automatic approval of leases should BIA time frames be missed. With respect to agricultural leases, we added time frames to improve BIA review and approval procedures, but have rejected the comments suggesting automatic approval if the BIA fails to meet the specified time frames.

We have retained the basic structure and content of the Proposed Rule's standard of review provisions for assignments, subleases and mortgages, respectively. Additionally, in response to several comments, we have added a standard of review provision for lease amendments at § 162.242. We also eliminated the provision in the Proposed Rule that would have required that a tenant remain liable even after an assignment is approved, leaving such matters to negotiation between the parties. In § 162.45, we have added a provision stating that amendments, assignments, subleases, and leasehold mortgages are immediately effective upon approval, notwithstanding any appeal which may be filed under 25 CFR Part 2.

The recording requirement for leasehold mortgages, as found in § 162.22 of the Proposed Rule, has been extended to all subsequently approved lease documents by § 162.246 of this Final Rule.

Lease Enforcement

Many respondents criticized the enforcement provisions in subpart H of the Proposed Rule, recommending that we employ stricter definitions of our enforcement responsibilities, including time frames for BIA action. In particular, commenters urged us to develop very specific enforcement provisions governing enforcement of a tenant's failure to pay rent. We have accepted these comments, and have combined some of the collection provisions in subpart B of the Proposed Rule with the enforcement provisions in subpart H of the Proposed Rule. In response to several commenters, § 162.248 contains new provisions specifying the actions the BIA will take to enforce a tenant's failure to pay rent. These actions include a written notice of violation, immediate action to recover undisputed overdue rent prior to lease cancellation, and the acceptance of partial payments. Additionally, in § 162.249 we have added a new provision addressing the BIA's authority to assess against delinquent tenants special fees to cover the cost of collection. The inspection provision in § 162.121 of the Proposed Rule has been strengthened in § 162.250 of the Final Rule, providing that appropriate investigation will be initiated within five days of the date on which the BIA receives notice that a specific violation has occurred.

Many respondents requested that we strengthen the provisions by which we cancel leases for violations. Specifically, commenters requested that we speed up the cancellation process to better protect Indian landowners against financial losses during the pendency of any appeal of a cancellation decision. We have accepted these comments in the Final Rule. First, the provisions relating to notices of violations, found in §§ 162.122–162.124 of the Proposed Rule, have been consolidated and clarified in § 162.251 of the Final Rule, by eliminating the right of a tenant to appeal a notice of violation other than by responding to the notice itself. The provisions in §§ 162.123(c) and 162.125–162.127 of the Proposed Rule outlining the actions a tenant could take to cure a violation have been combined in § 162.252 of the Final Rule, with the election of remedies to be based in part on consultation with the Indian landowners. Second, special streamlined appeal provisions will be applied to lease cancellations. For example, in § 162.253, bonding requirements for decisions to cancel leases will differ from those in 25 CFR Part 2. Additionally, § 162.254 provides that cancellation decisions will be stayed only for thirty days pending the filing of an appeal. Third, the provisions relating to emergency actions from §§ 162.128–162.129 of the Proposed Rule have been consolidated and strengthened in § 162.255 of the Final Rule. Finally, § 162.256 provides that holdover tenants will be treated as trespassers.

Subpart C (Residential Leases) Is Reserved

Subpart D (Business Leases) Is Reserved

Subpart E—Special Requirements for Certain Reservations

Summary of Subpart

Subpart E identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. These provisions were in subpart N of the proposed regulations. Except for the removal, at the request of the tribe, of the section pertaining to the Colorado River Reservation, there have been no changes from the superseded or proposed regulations.

Subpart F—Non-Agricultural Leases

Summary of Subpart

As noted above, because of the enactment of the ILCA Amendments and the separation of agricultural leases into a distinct subpart, the BIA will promulgate new regulations for business and residential leases in the future. Until then, such leases must continue under existing authority. Therefore, new subpart F contains the general leasing authorities from the superseded regulations at 25 CFR 162.2–162.10, and §§ 162.12–162.13. In response to the many comments requesting stronger provisions for collection of lease rent and enforcement of lease provisions, subpart F contains new collection and enforcement provisions for non-agricultural leases, modeled on those in subpart B. Subpart F will be withdrawn when the new business and residential lease subparts are issued.

E. 25 CFR Part 166—Grazing Permits on Indian Lands

The purpose of this part is to describe the authorities, policies and procedures the Secretary uses to grant, approve and administer grazing permits on agricultural lands that are restricted against alienation or are held by the United States in trust for federally recognized Indian tribes and individual Indians, as well as certain lands owned by the federal government. It revises and entirely replaces the existing part 166, and implements the AIARMA with regard to grazing permits on Indian agricultural land and education in agriculture management. We have taken care to ensure consistency of related provisions in both parts 166 and 162 that implement the AIARMA.

Part 166 balances the Secretary's responsibilities as trustee of Indian land and resources with the need for Indian tribes and individual Indian landowners to exercise control over their agricultural trust lands and business affairs. Part 166 is organized to include ten subparts for the convenience of the reader. The expanded sections clarify existing policies and procedures governing the administration of grazing permits on Indian agricultural lands and is intended to bring consistency to the administration of grazing permits by the BIA. Part 166 does not address leasing of any type, nor does it address permitting for purposes other than grazing. Leasing of Indian lands is covered in part 162 of 25 CFR.

General Observations Regarding Changes From Proposed Rule

The Final Rule follows the format used in the Proposed Rule. Specific

changes and responses to significant comments are outlined below.

Subpart A—Purpose, Scope, and Definitions

Summary of Subpart

Subpart A addresses the purpose and scope of part 166 and describes the authorities, policies, and procedures the Secretary uses to approve, grant, and administer grazing permits of Indian agricultural land. This subpart also defines key terms used throughout part 166. These terms are consistent with those found in the AIARMA.

Comments

As we noted in our general discussion of the final regulation and our discussion of part 162, several commenters recommended that the BIA develop a stand-alone rule to implement the AIARMA exclusively. This recommendation was not accepted. Part 166 fully implements the AIARMA as it pertains to grazing permits on Indian land.

One tribe recommended that the Final Rule not impact tribal grazing lands currently governed by other parts of Title 25 of the Code of Federal Regulations. This recommendation was accepted. Section 166.1(c) was added to clarify that tribal grazing programs authorized under separate statutory authority are not subject to part 166.

Several respondents requested clarification of definitions including ''conservation practices,'' ''fair annual rental,'' ''majority interest,'' ''on-and-off grazing permit,'' ''owner's use,'' and ''parcel.'' These comment were accepted and the revisions have been incorporated into the definitions found in subpart A. Also in response to several comments, all the definitions were reviewed and revised to maintain consistency with the AIARMA and part 162.

Subpart B—Tribal Policies and Laws Pertaining to Permits

Summary of Subpart

Under subpart B, tribal laws and ordinances, including laws regulating the environment, cultural or historic preservation, land use, and other activities under tribal jurisdiction, apply to grazing permits on Indian agricultural lands unless such tribal laws and ordinances are prohibited by federal law. Tribes are responsible for enforcing tribal laws and ordinances pertaining to Indian agricultural lands with the assistance of the Secretary.

Consistent with the AIARMA, this subpart makes clear that when authorized by an appropriate tribal resolution, the Secretary will comply with certain general tribal policies pertaining to permitting on Indian agricultural lands. Also consistent with the AIARMA, subpart B provides that individual Indian landowners who have at least a 50% interest in a fractionated tract of Indian land can exempt their Indian land from the Secretary's implementation of these certain general tribal policies by submitting a written request to the BIA.

Comments

Similar to part 162, many comments questioned provisions of part 166 that allow individual Indian land owners to exempt their lands from certain general tribal policies pertaining to permitting on Indian agricultural lands. Comments also recommended that tribes should not be authorized to define ''highly fractionated undivided heirship lands.'' These comments were not accepted. Section 3715(b) of the AIARMA authorizes tribes to establish certain general tribal policies pertaining to permitting on Indian agricultural lands through an appropriate tribal resolution which also includes the authorization of tribes to define ''highly fractionated undivided heirship lands'' for notification purposes. Section 3715(c)(3) of the AIARMA authorizes individual Indian landowners who have at least a 50% interest in a fractionated tract of Indian land to exempt their Indian land from the Secretary's implementation of these certain general tribal policies pertaining to permitting on Indian agricultural lands by submitting a written request to the BIA. Part 166 fully complies with these provisions of the AIARMA.

Many comments recommended that tribes not be required to notify the BIA when new tribal laws or policies are enacted. These comments were not accepted. Section 3712(b) of the AIARMA requires the Secretary to provide notice of tribal laws or policies to persons or entities undertaking activities on Indian agricultural lands. It is reasonable to require tribes to notify the BIA of new applicable tribal laws or policies so that the Secretary may comply with the AIARMA. This notice requirement does not invalidate tribal laws or policies if tribes do not provide the BIA with notice of such new laws or policies. Finally, in response to comments, a provision was added in § 166.104 that states the BIA will notify affected Indian landowners, in addition to permittees, of new applicable tribal laws or policies.

Subpart C—Permit Requirements

Summary of Subpart

This subpart describes general requirements for obtaining a grazing permit, obtaining a grazing permit (leasehold) mortgage, modifying and assigning a grazing permit, and subpermitting of an existing grazing permit. This subpart also recognizes the authority of tribes to determine the duration of permits on tribal lands. Pursuant to the AIARMA, 25 USC 3715(a), subpart C provides that grazing permits would be generally granted for a period of ten years unless a longer term of up to 25 years is appropriate.

Subpart C recognizes that the Secretary has authority to grant or approve only permits of trust interests in Indian lands. Subpart C also makes clear that to ensure the preservation and proper use of trust lands, the Secretary requires permittees to conduct grazing operations in accordance with tribal goals and priorities for multiple use, sustained yield, agricultural resource management planning, and sound conservation practices. This subpart further requires permittees to fulfill all financial obligations to the Indian landowners and to conduct only those activities authorized by the grazing permit. Failure by a permittee to meet these expectations may result in an imposition of fines or penalties under subpart H, ''Permit Violations,'' or subpart I, ''Trespass,'' in order to protect the interests of the Indian landowners.

Comments

Several comments recommended a clarification of whether the BIA must approve tribal permits. The recommendation was accepted. Clarifications were made in § 166.1 of subpart A which describe specific circumstances for which Secretarial approval is not required for tribal permits.

Many respondents recommended that the regulations provide protection to Indian landowners so that their land may not be subpermitted at higher rates without a commensurate benefit to the Indian landowners. These recommendations were accepted. Section 166.229 provides protection to the Indian landowner by requiring BIA approval and the written consent of all parties to the permit (including Indian landowners) prior to an amendment, modification, assignment, transfer, or subpermit.

The proposal to eliminate the ''on-and-off'' grazing permit system that allowed for the administration of range units that involve both trust and non-trust lands was the subject of many

concerns. These respondents raised concerns about prudent range management practices where grazing trust land is permitted adjacent to non-trust land where grazing also occurs. These comments were accepted. A new provision, § 166.308, was added to allow the modification of the number of animals on permitted Indian land in order to accommodate adjacent non-trust lands so long as the conservation plan and the permit for the permitted Indian land accounts for this practice. However, the Secretary has no management authority over non-trust lands and will not approve grazing on non-trust lands.

The non-trust interest provisions previously located in subpart C of the Proposed Rule was eliminated. A discussion of the Secretary's responsibility regarding non-trust interest is now found in § 166.1.

A small number of comments recommended that leasehold mortgages not be allowed on grazing permits. Because such mortgages can be an important mechanism for economic development, these comments were not accepted. Section 166.223 preserves the option of mortgages on the permitted interest for those wishing to do so. Such mortgages apply only to the permit interest, not the interest in Indian land, and are a valid source of secured lending. The BIA recognizes that leasehold mortgages should be available where the parties to the permit agree. Mortgaging a permit interest is not required, and the parties to the permit remain free to negotiate a provision to allow or disallow such mortgages.

Several comments recommended that part 166 contain a 30-day time frame for notifying permittees of the removal of tribal land from a range unit. These comments were not accepted. Permittees require a reasonable time to make other arrangements for their livestock when tribal lands are removed from a range unit. Thus, § 166.228 continues the current 180-day notice requirement.

Several comments recommended that tribes be responsible for conducting their own appraisals and valuations. While the comments have merit, the Secretary has a trust responsibility to ensure that appropriate valuation is obtained for each permit. Tribes may conduct their own valuations in addition to valuations required by part 166.

Several comments recommended that the BIA should not limit valuation methods to appraisals. These comments were accepted. Section 166.401 was re-written to clarify that additional valuation methods may be employed as appropriate if consistent with the Uniform Standards of Professional Appraisal Practices (USPAP).

Many comments recommended that emancipated minors be recognized as adults and be authorized to grant permits on their own behalf. These comments were accepted. Section 166.202 was re-written to enable emancipated minors to grant grazing permits on their own behalf.

A number of respondents recommended that part 166 clarify the Indian landowner's responsibility in negotiating and advertising permits. These comments were accepted. Sections 166.220 and 166.221 were clarified to reflect that Indian landowners may negotiate permits and advertise for bids. The BIA will continue to assist Indian landowners with negotiations and advertisement or negotiate or advertise on behalf of Indian landowners when requested.

Subpart D—Land and Operations Management

Summary of Subpart

Subpart D, ''Land Operations and Management,'' describes how the BIA will establish range units and grazing capacity in consultation with Indian landowners.

All grazing permits issued under subpart D must be consistent with an agricultural resource management plan prepared in accordance with § 3711(b) of the AIARMA by a tribe or by the BIA in close consultation with a tribe. To ensure that a permittee's intended objectives regarding animal husbandry and other grazing issues represent sound practice, § 166.312 requires that a conservation management plan be developed with the permittee for each permit. The conservation management plan must be consistent with the tribe's approved agricultural resource management plan.

Comments

Several comments recommended that the Final Rule include an ''on-and-off'' grazing permit that allows the number of animals and/or season of use to be modified on the permitted land if adjacent trust or non-trust rangelands are used. These comments were accepted. Section 166.308 of this subpart describes how the number of animals and/or adjacent trust or non-trust rangelands may be included in an ''on-and-off'' grazing permit.

Several comments recommended that the final rule accommodate tribes that wish to decide livestock ownership requirements on tribal land, including those pertaining to non-Indian cattle owners and Indian cattle enterprises. These recommendations were accepted. A new provision, § 166.309, was added to support the tribe's authority to determine tribal livestock ownership requirements on tribal lands.

Several respondents recommended that conservation plans not be developed by permittees, and that tribes should be included when preparing and evaluating conservation plans. Many also recommended that part 166 provide greater specificity on how tribes should develop their agriculture resource management plans. Section 166.312 provides that conservation plans will be developed with the permittee for each permit and must be approved by the BIA prior to issuance of the permit. The conservation plan must also be consistent with the tribe's agriculture resource management plans in accordance with the AIARMA. As written, § 166.312 does not mandate options by which tribes may fund or contract plan development in order to maintain flexibility.

Several commenters recommended that part 166 identify who would be liable for completing or maintaining a conservation practice through a USDA cost share program or other similar program if the permittee no longer holds the permit. These comments were accepted. A new provision, § 166.315, was added that requires the parties to the permit to negotiate and identify which party will be responsible for completing and/or maintaining a conservation practice should the permit expire or be canceled.

Subpart E—Grazing Rental Rates, Payments, and Late Payment Collections

Summary of Subpart

Subpart E, ''Grazing Rental Rates, Payments, and Late Payment Collections'' preserves the ability of tribes to establish grazing rental rates on tribal lands. The BIA continues to set the grazing rental rates for individually owned Indian land. This subpart clarifies the procedures by which tribes may set grazing rental rates higher or lower than the BIA's established fair annual rental rate.

As trustee, the Secretary must determine the fair annual rental value of Indian trust lands in order to assist Indian landowners in negotiating permits with potential permittees and to determine if a permit is in the best interest of the Indian landowner. Subpart E clarifies that the BIA will determine fair annual rental value for grazing permits on Indian agricultural lands by appraisal, advertisement,

competitive bidding, or any other appropriate method that complies with the USPAP. The BIA does not intend to specify in part 166 the particular method for appraising agricultural land; rather, ensuring flexibility in choosing an appraisal method allows the Secretary to most effectively discharge his responsibility as trustee.

Subpart E continues the practice of direct payments to Indian landowners, and requires adequate proof of payment.

In § 166.424, the BIA will prorate grazing rental payments made to each Indian landowner according to the forage production that each parcel of Indian land contributes to the permit, annual rental rate of each parcel, and the Indian landowner's interest in each parcel.

Comments

Many comments recommended that the BIA clarify and expand payment methods to allow greater flexibility for landowners such as by allowing rental payments by electronic funds transfer, personal, and business checks. These comments were accepted. In addition, § 166.419(c) allows for partial rental payments only under special circumstances with the written consent of the parties to the permit and the BIA approval when necessary to obtain the maximum payment possible for the Indian landowner.

Many comments were received about the BIA's obligation to collect late rental payments owed to Indian landowners. These comments were accepted. Part 166 includes new provisions that describe the BIA's responsibility in collecting late rental payments. For example, § 166.419 describes the collection actions the BIA will take (including canceling the permit, assessing payment penalties, interest, and administrative fees, and referring unpaid debts to the United States Department of Treasury for collection) against a permittee to collect on a late payment. The NCAI recommended that the BIA adopt a collection process from another federal agency that would initiate trespass action immediately for non-payment of rental payments. This recommendation was not accepted because permits must be canceled before a permittee can be determined to be in trespass.

Subpart F—Administrative and Tribal Fees

Summary of Subpart

Subpart F, ''Administrative and Tribal Fees,'' provides a schedule of administrative fees based on the dollar value of the permit. This subpart provides a minimum and maximum administrative fee amount. The BIA continues to be able to waive such administrative fees. This subpart also acknowledges that tribes may establish and collect their own administrative fees in addition to administrative fees assessed by the BIA.

Comments

Several comments recommended that the BIA use a flat administrative fee rate to charge permittees for the administration of permits. These comments were accepted. The BIA will charge a flat three percent administrative fee based on the annual grazing rental to cover costs associated with the performance of administrative duties. The existing minimum and maximum administrative fees described in the proposed regulation were retained in § 166.501(b).

Subpart G—Bonding and Insurance Requirements

Summary of Subpart

Subpart G, ''Bonding and Insurance Requirements,'' clarifies current BIA practices by requiring that a bond be provided for each permit issued to ensure performance and compliance with permit terms. Upon request of an Indian landowner, the BIA may waive the bond requirement. For grazing permits on tribal lands, this subpart recognizes tribal authority to negotiate the form of the bond.

Comments

Many comments recommended that part 166 include bonding requirements that address overgrazing on Indian lands. These comments were accepted. Section 166.601(a)(4) as described in the proposed regulation was retained and allows a bond to be applied to the costs of restoration and reclamation of Indian land damaged by a permittee. Also, § 166.602(b) states that Indian landowners may negotiate a permit term that specifies the use of any bond forms described in § 166.602(a).

Several comments recommended that the BIA pay interest on cash bonds. These comments were not accepted. Cash bonds are not trust funds and are not administered as trust funds, and therefore are ineligible for interest payments without additional statutory authority.

Subpart H—Permit Violations

Summary of Subpart

Subpart H, ''Permit Violations,'' provides for Secretarial action should the BIA learn that a violation of the terms of a grazing permit may have occurred.

Comments

Several comments recommended that grazing unit inspections by the BIA for permit compliance be required more often than one time per year. These comments were not accepted. Due to the varying circumstances of each range unit, flexibility in grazing unit inspections must be maintained. While the BIA intends to increase its ability to monitor range units for permit compliance, the BIA must continue to rely on information provided by Indian landowners. Thus, § 166.703(a) was added to clarify that Indian landowners may contact the BIA to request that appropriate enforcement action be taken by the BIA should an Indian landowner believe that a violation has occurred.

Several comments recommended that the final rule support the tribe's authority to adopt its own appeal process for range unit violations. These comments were accepted. Section 166.702 was modified so that the parties to a grazing permit may negotiate a provision in the permit that would defer to tribal remedies for permit violations.

Subpart I—Trespass

Summary of Subpart

Subpart I, ''Trespass,'' defines trespass under a grazing permit to include any unauthorized occupancy, use of or action on Indian agricultural or government lands assigned to the control of a tribe. This subpart describes the process for trespass notification, enforcement, actions, penalties, damages, and costs.

Comments

Many comments recommended that part 166 should include a trespass inspection schedule. These comments were not accepted. As with grazing unit inspections under subpart H, flexibility in inspections must be maintained to take into account varying range unit circumstances and the need to rely on Indian landowners. Part 166 provides that the BIA will continue to act on specific information about trespass on Indian agricultural lands. Section 166.801 clarifies our obligation to investigate and respond to allegations of trespass.

Several comments recommended that penalties received from a grazing trespass be paid directly to the permittee. These comments were partially accepted. Section 3713(c) of the AIARMA authorizes the payment of proceeds from trespass for the loss of forage or other damage. However, the

AIARMA is unclear as to whether permittees are to receive all or some of such proceeds. The BIA recognizes that the loss of forage or other damage is often sustained by the permittee. In order to provide for trespass payments to permittees (as an affected party under section 166.818) for the loss of forage or damage due to trespass, the parties to the permit may include a trespass reimbursement provision in the permit that allows for such reimbursement.

One comment recommended the final rule should not suggest that tribes are required to adopt the trespass provisions of part 166 in order to secure tribal trespass jurisdiction. This comment was accepted. Section 166.802(b) was added to specifically recognize the authority of tribes to take any trespass action tribal law may allow.

Subpart J—Agriculture Education, Education Assistance, Recruitment, and Training

Summary of Subpart

Subpart J, Agriculture Education, Education Assistance, Recruitment, and Training, outlines the provisions for implementing subchapter II of the AIARMA, Education in Agriculture Management.

Comments

Many comments recommended that students receive one year of funding for one year worked in the agricultural education program in accordance with the AIARMA. This comment was accepted. Section 166.901(f)(3) was changed to support the requirement that students enter into an obligated service agreement to serve as a professional resource manager or agriculture-related professional with an approved organization for one year in exchange for each year in the program.

Subpart K—Records

As noted previously, new provisions have been added addressing the ownership and maintenance of trust records associated with the performance of this part. These provisions replace those in subpart K of the Proposed Rule.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), OMB must determine whether the regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

Accordingly, OMB has determined that this rule is not a significant regulatory action and is largely administrative and technical in nature. The rule describes how the federal government will administer its trust responsibility in managing the trust fund accounts. Thus, the impact of the rule is confined to the federal government and the Indian trust beneficiaries and does not impose a compliance burden on the economy generally. The Department did submit the entire Proposed Rule for review by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) as a significant policy matter impacting all federally-recognized Indian tribes and individual Indians. This decision was made because of the magnitude of the monies involved in Indian trust matters and the notion that any revisions to existing regulations that impact trust account management could have significant impacts on tribal governments, communities and individual Indians. In particular, the Department conducted an economic analysis of the revisions to part 115 and found that there were significant benefits in management, security and reporting of trust accounts and only small increases on tribal governments or individual Indians. The increased benefits are better identification of funds, ability to gain performance reports on tribal or individual accounts, clarifications in what funds could be deposited into such accounts, better distribution procedures, and clarifications on when and how such accounts could be restricted or otherwise encumbered. The revisions to part 115 were found to have potential for administrative savings.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section (b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of the Interior has determined that, to the extent permitted by law, the proposed regulation meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule streamlines the Department's policies, procedures, provisions and clauses that apply to certain Indian trust resources. Indian tribes are not small entities under the Regulatory Flexibility Act. Any impacts on identified small entities affected by this rulemaking are minimal as they would concern a small number of farmers, ranchers, and individuals doing business on Indian lands. Accordingly, the Department of the Interior has determined that this regulation will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more. The revised parts represent programs that are ongoing within the BIA and no new monies are being introduced into the stream of commerce. This rule will not result in a major increase in costs or prices. The effect of this rulemaking will be to streamline ongoing policies, procedures and management operations of the BIA in their handling of tribal and individual Indian trust resources. No increases in costs for administration will, therefore, be realized and no prices would be impacted through these administrative and technical clarifications of existing field practice. This rulemaking will not result in any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets. The impact of the rulemaking will be realized by tribal governments and individual Indians having a protected trust resource. These administrative and technical clarifications of Departmental policy and procedure will not otherwise have a significant impact on any other small businesses or enterprises.

E. Review Under the Paperwork Reduction Act

This rulemaking requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act of 1995, Public Law 104–13, is required. Accordingly, the Department prepared an OMB form 83–I for review and approval by OMB. Having reviewed the submissions of the Department with respect to the burden hours of each part of this rulemaking, along with any comments that were submitted by the reviewing public, OMB has approved the information collection requirements contained in this rulemaking and has assigned OMB control number 1076–0154.

F. Review Under Executive Order 13132—Federalism

This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. While this rule will impact tribal governments, there is no Federalism impact on the trust relationship or balance of power between the United States government and the various tribal governments affected by this rulemaking. Therefore, in accordance with Executive Order 13132, it is determined that this rule has no sufficient federalism implications to warrant the preparation of a Federalism Assessment.

G. Review Under the National Environmental Policy Act of 1969

This rule does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the Act, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The Department, however, determined that the rulemaking would uniquely affect tribal governments and, accordingly, followed Departmental and Administration protocols in consulting with tribal governments on this rulemaking. See discussion on consultations found in the Background section of this preamble. These consultations were in keeping with the President's Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.''

List of Subjects

25 CFR Part 15

Estates, Indians—law.

25 CFR Part 114

Accounting, Indians—business and finance.

25 CFR Part 115

Administrative practice and procedure, Indians—business and finance.

25 CFR Part 162

Indians—lands.

25 CFR Part 166

Grazing lands, Indians—lands, Livestock.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends 25 CFR as follows:

PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

1. Part 15 is revised to read as follows:

Subpart A—Introduction

Sec.

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15.2 What terms do I need to know?
15.3 Will the Secretary probate all the property in Indian estates?
15.4 How does the probate process work?

Subpart B—Starting the Probate Process

15.101 How do I begin the BIA probate process?
15.102 May I notify the BIA of a death if I am not related to the decedent?
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15.104 What other documents does the BIA need to process a probate package?
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15.206 Is there a summary process for distributing an estate with only trust cash assets?

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15.301 What does the attorney decision maker do with the probate package?
15.302 What law is used by the deciding official to determine the distribution of the trust estate?
15.303 If the decedent owed me money, how do I file a claim against the estate?

15.304 How does the BIA deciding official determine if a claim will be allowed and paid?
15.305 What claims will be paid first?
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Subpart E—Appeals

15.401 May I appeal the decision of the BIA deciding official?
15.402 How do I file an appeal of the decision/order?
15.403 How long do I have to file an appeal?
15.404 What will happen to the estate if an appeal is filed?
15.405 How does the ALJ review a decision issued by a BIA deciding official?

Subpart F—Information and Records

15.501 If I have a question about a probate that has been assigned to a BIA deciding official, may I contact the deciding official directly?
15.502 How can I find out the status of a probate?
15.503 Who owns the records associated with this part?
15.504 How must records associated with this part be preserved?

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 588, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022, 25 U.S.C. 372, 373, 374, 373a, 373b; Federal Records Act, as amended, 44 U.S.C. § 3101, *et seq.* (1950).

Cross reference: For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see Title 43, Code of Federal Regulations, Part 4, Subpart D; Funds of deceased Indians other than the Five Civilized Tribes, see Title 25 Code of Federal Regulations, Part 115.

Subpart A—Introduction

§ 15.1 What is the purpose of this part?

This part contains the procedures that the Secretary follows to initiate the probate of the trust estate of a deceased individual Indian who owned trust or restricted property. This part tells you how to file the necessary documents to probate the trust estate. This part also describes how probates will be processed by the BIA, and how probates may be sent to the OHA for disposition.

§ 15.2 What terms do I need to know?

ALJ means an administrative law judge or other employee of the Department of the Interior's Office of Hearings and Appeals (OHA) upon whom authority has been conferred by the Secretary to conduct hearings in accordance with 43 CFR Part 4 Subpart D.

BIA means the Bureau of Indian Affairs within the Department of the Interior.

IIM account means Individual Indian Money Account.

LTRO means the Land Titles and Records Office within the BIA.

OHA means the Hearings Division, Office of Hearings and Appeals, Department of the Interior.

OTFM means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Agency means the agency office or any other designated office in the BIA having jurisdiction over trust or restricted property and money. This term also means any office of a tribe which has contracted or compacted the BIA probate function under 25 U.S.C. § 450f or 25 U.S.C. § 458cc.

Attorney decision maker means an attorney with the BIA, who reviews a probate package, determines heirs, approves wills and beneficiaries of the will, determines creditors claims, and issues a written decision.

Beneficiary means any individual who receives trust or restricted property or money in a decedent's will.

Day means a calendar day, unless otherwise stated.

Decedent means a person who is deceased.

Deciding official means the official with the delegated authority to make a decision on a probate matter, and may include a BIA regional director, agency superintendent, field representative, or attorney decision maker (BIA deciding official); or an OHA ALJ or other OHA designated official (OHA deciding official).

Decision/order means a written document issued by the deciding official determining heirs, approving wills and beneficiaries of the will, approving creditors claims, and ordering distribution of property and money.

Domicile means the legal residence of the person.

Estate means the trust cash assets, restricted or trust lands owned by the decedent at the time of his death.

Form OHA–7 means a form issued by the OHA which lists data for heirship and family history, and provides information on any wills, trust and restricted property, adoptions, names and addresses of all interested parties.

Heir means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

IIM account means funds held in an individual Indian monies account by the OTFM or a tribe performing this function under a contract or compact.

Interested parties means any probable or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any tribe having a statutory option to purchase the trust or restricted property interest of a decedent.

Intestate means the decedent died without a will.

Minor means an individual that has not reached age of majority as defined by the applicable tribal or state law.

Probate means the legal process by which applicable tribal law, state law, or federal law that affects the distribution of the decedent's estate is applied to: (1) determine the heirs; (2) approve wills and beneficiaries; and (3) transfer any funds held in trust by the Secretary for a decedent to the heirs, beneficiaries, or other persons or entities entitled by law.

Probate clerk means a BIA or tribal employee who is responsible for processing a probate package.

Probate specialist means the BIA or tribal employee who is trained in Indian probate matters.

Restricted land means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

Secretary means the Secretary of the Interior or an authorized representative.

Superintendent or Field Representative means an authorized representative of the Secretary of the Interior who is the officer in charge of a BIA agency or field office.

Testate means the decedent executed a will before his death.

Trust cash assets means the funds held in an IIM account.

Trust land means the land, or an interest therein, for which the United States holds fee title in trust for the benefit of an individual Indian.

Vendor or Creditor means any individual or company who submits a claim for payment from a decedent's estate.

We/Us means either an official of the BIA or a tribe performing probate functions under a BIA contract or compact.

Will means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

You/I means an interested party, as defined herein, with an interest in the decedent's estate unless a specific section says otherwise.

§ 15.3 Will the Secretary probate all the property in Indian estates?

(a) No. We will probate only the trust or restricted property in the estate of an Indian decedent.

(b) We will not probate:

(1) Real or personal property in an estate of an Indian decedent that is not trust or restricted property;

(2) Restricted property derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests.

(c) We will probate the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owns an interest in land derived from an individual Indian other than the Five Civilized Tribes or Osage Nation.

§ 15.4 How does the probate process work?

The basic steps of the probate process are:

(a) We find out about a person's death (see subpart B for details);

(b) We prepare a probate package which includes documents that you send us (see subpart C for details);

(c) We refer the completed probate package to a deciding official in the BIA or the OHA (see subpart D for details);

(d) The deciding official decides how to distribute the property and/or funds deposited in an IIM account (see subparts D and E for details).

Subpart B—Starting the Probate Process

§ 15.101 How do I begin the BIA probate process?

As soon as possible you should contact the nearest BIA agency or regional office where the decedent was enrolled to inform us of the decedent's death. You must provide a certified copy of the death certificate, if one exists. If a death certificate does not exist, you may provide one or more of the following:

(a) A copy of the obituary notice from a local newspaper; or

(b) Any other document that we accept that verifies the death, such as a church record or a court record; and

(c) An affidavit of death prepared by the tribe with whom the decedent was associated or someone who knows about the decedent's death that supports the information in paragraph (a) or (b) of this section.

§ 15.102 May I notify the BIA of a death if I am not related to the decedent?

Yes. You do not need to be related to the decedent in order to notify us of the death. You can be a friend, neighbor, or any other interested party.

§ 15.103 When should the BIA be notified of a death?

There is no deadline for notifying us of a death. However, you should notify us of a death as soon as possible after the person dies.

§ 15.104 What other documents does the BIA need to process a probate package?

(a) You should provide us with the following documents and information before we can begin to process the probate package.

(1) Social Security number of the decedent;

(2) The birth certificate or other record of birth of the decedent;

(3) All death records including those listed in § 15.101;

(4) A list of known creditors against the estate and their addresses;

(5) Current names and addresses of potential heirs and beneficiaries;

(6) Any statements renouncing an interest in the estate;

(7) Documents from a court of competent jurisdiction, including but not limited to:

(i) All marriage licenses of the decedent;

(ii) All divorce decrees of the decedent;

(iii) Adoption and guardianship records relevant to the decedent;

(iv) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;

(v) Any name changes; and

(vi) Order requiring payment of child support;

(8) All original or certified copies of wills and codicils, and any revocations; and

(9) Any additional documents you provide or that we request.

(b) You must inform us if any of the documents or information identified in this part are not available.

§ 15.105 Will the BIA wait to begin the probate process until it is notified of the decedent's death?

No. We may find out about the death of a person without being notified by an interested party. If we do, and if the decedent meets the criteria in § 15.3, we will initiate the process to collect the necessary documentation. You should not assume that we will find out about a death. To assure timely distribution of the estate, you should notify us as provided in § 15.101.

§ 15.106 Can I get emergency assistance for funeral services from the decedent's IIM account?

(a) If you are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account and you have an immediate need to pay for funeral arrangements prior to burial, you may make a request to the BIA for up to $1,000 from the decedent's IIM account if the decedent's IIM account has more than $2,500 in the account at the date of death.

(b) You must apply for this assistance and submit to the BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs up to $1,000 that are necessary for the burial services, taking into consideration the total amount in the account, the number of probable heirs or beneficiaries of whom we are aware, the amount of any claims against the account of which we are aware, and any other relevant factor.

(d) We will make payments directly to the providers of the services.

§ 15.107 Who prepares an Indian probate package?

The probate specialist or probate clerk at the agency or tribe where the decedent is an enrolled member will prepare the probate package in consultation with the probable heirs or beneficiaries who can be located.

§ 15.108 What agency prepares the probate package if the decedent was not an enrolled member of a tribe or is a member of more than one tribe?

(a) If the decedent was not an enrolled member of a tribe, but owns interests in trust or restricted property, the agency that has jurisdiction over the tribe with the strongest association with the decedent will prepare the probate package, unless otherwise provided by federal law.

(b) If the decedent was is a member of more than one tribe, the agency that has jurisdiction over the tribe with the strongest association with the decedent

will prepare the probate package, unless otherwise provided by federal law.

§ 15.109 Can a probable heir or beneficiary give up his/her interest in trust or restricted lands or trust funds?

Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, you must file a statement renouncing your interest with the BIA or the OHA before the deciding official issues an order.

(a) If you are a non-Indian and 21 years or older, you may give up all or part of your interest by submitting a notarized statement in which you renounce your interest in the estate.

(b) If you are an Indian and 21 years or older and you wish to give up all or part of your interest in the estate, we must refer your request to the OHA in accordance with 43 CFR 4.208.

Subpart C—Preparing the Probate Package

§ 15.201 What will the BIA do with the documents that I provide?

Once we receive the documents that you provide us under § 15.105, the probate specialist or probate clerk will:

(a) Use the documents to prepare a probate package; and

(b) Consult with you and any other sources to obtain any additional information needed for a complete package.

§ 15.202 What must the complete probate package contain?

The complete probate package must contain all of the following:

(a) A certified copy of the death certificate, if one exists, or some other reliable evidence of death as required by § 15.101;

(b) A completed Form OHA–7, ''Data for Heirship Findings and Family History,'' certified by the BIA;

(c) A certified inventory of trust or restricted real property;

(d) A statement describing all income generating activity;

(e) A copy of the decedent's IIM account ledger showing:

(1) The balance of the account at the date of death; and

(2) The balance of the account at the date of probate package submission;

(f) All original or certified copies of wills, codicils and any revocations of wills or codicils;

(g) Any statements renouncing interest that have been submitted to the agency;

(h) Claims of creditors against the estate;

(i) All documentation of payment of claims paid prior to probate proceeding;

(j) All other documents required in § 15.105;

(k) Tribal options to purchase interests of a decedent;

(l) Affidavit of the probate clerk or probate specialist that all efforts to locate the probable heirs and beneficiaries have been exhausted; and

(m) Any other documentation that may be required at the time of probate proceedings.

§ 15.203 What happens after the BIA prepares the probate package?

Within 30 days after all the documents required by § 15.105 and § 15.202 are received, a probate specialist will review the probate package and determine who will be the appropriate deciding official.

(a) If the decedent's estate contains only trust cash assets of a value less than $5,000 not including any interest that may have accrued after the death of the decedent, the probate package may be processed in accordance with § 15.206 and may be referred to a BIA deciding official subject to the provisions in § 15.205.

(b) All other probate cases will be referred to a BIA attorney decision maker or an OHA deciding official subject to the provisions in § 15.205.

(c) We will notify all interested parties of:

(1) The right of the probable heirs or beneficiaries to request a formal hearing before an ALJ;

(2) The identification of the probable legal heirs; or

(3) The submission of an original or certified copy of a will or revocation and listed beneficiaries;

(4) Any known claims against the estate; and (5) The address of the designated office where the probate package has been sent.

(d) If the deciding official is at the BIA and you have not requested a formal hearing before an ALJ, the probate specialist will send the probate package to the BIA deciding official within 30 days after the date the probate specialists mailed the notice to you.

(e) If the deciding official is at the OHA, then we will send the probate package to the OHA deciding official and notify the probable heirs that they may ask the OHA for an in-person hearing at a site convenient to most of the parties, a video conference or teleconference hearing (if available), or a decision based on documents in the probate package.

(f) On the same day that the probate specialist has determined who will be the designated deciding official, we will notify you of this determination by certified mail, return receipt requested.

§ 15.204 After the probate package has been sent to a BIA deciding official, may I still request a formal hearing with an ALJ?

Yes, you may request a formal hearing before an ALJ at any time up until the date the BIA deciding official renders a decision.

§ 15.205 When will the BIA refer a probate to the OHA?

We will refer a probate to the OHA under § 15.203(d) if the probate specialist determines that a referral is appropriate. In determining whether to refer a probate to the OHA, the probate specialist will consider all of the criteria listed below:

(a) *Problems with the will.* The probate specialist will refer the probate package to the OHA if it appears that the will:

(1) Is likely to be contested;

(2) Is complex or ambiguous; or

(3) Is of questionable validity.

(b) *Contested claims.* The probate specialist will refer the probate package to the OHA if you:

(1) Contest a creditor claim; or

(2) Contest a claim made by a family member.

(c) *Other problems.* The probate specialist will be refer the probate package to the OHA if it appears there are:

(1) Questions about family relationships;

(2) Conflict in prior probate orders;

(3) Problems with the evidence;

(4) Questions about adoption of an heir;

(5) Questions involving paternity;

(6) Presumptions of death;

(7) Rights of minor heirs that might be jeopardized;

(8) Disclaimers of interests by Indian probable heirs or beneficiaries;

(9) Determinations of escheat under 43 CFR § 4.205;

(10) Challenges to the jurisdiction of any court that issued an order that has been used as a supporting document; or

(11) Questions concerning the decedent's domicile.

(d) *Approval of settlement agreements.* The probate specialist will refer the case to the OHA if there is a settlement agreement between heirs or beneficiaries as to the disposition of the estate.

§ 15.206 Is there a summary process for distributing an estate with only trust cash assets?

Yes. Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, a decedent's estate that contains only trust cash assets of a value less than $5,000 not including any interest that may have

accrued after the death of the decedent, may be summarily processed by a BIA deciding official.

(a) Within 30 days after notice under § 15.203 has been sent, the probable heirs may request a formal hearing before an ALJ to determine the proper distribution of the trust cash assets. Upon notice of a request for a formal hearing, the probate specialist will forward the probate package to the appropriate ALJ within five days.

(b) Within 60 days after notice under § 15.203 has been sent and if the probable heirs have not requested a formal hearing with an ALJ, the BIA deciding official to whom the probate has been referred will assemble the probable heirs and hold an informal hearing to determine the distribution of the trust cash assets.

(c) Within 30 days after the informal hearing, the BIA deciding official will prepare an order in accordance with § 15.302 through § 15.311.

(d) Any interested party may appeal a summary distribution decision in accordance with subpart E of this part.

Subpart D—Probate Processing, Claims and Distributions

§ 15.301 What does an attorney decision maker do with the probate package?

(a) Upon receipt of the probate package, the attorney decision maker reviews the probate package and determines whether there are issues of fact or law of the case that indicate that the probate package should be referred to the OHA. If any issues of fact or law that require a hearing are apparent from the review of the case, the attorney decision maker will refer the probate package to the appropriate ALJ within five days.

(b) Within 30 days after notice under § 15.203 has been sent, the probable heirs may request a formal hearing before an ALJ to determine the distribution of the estate. Within five days of the receipt of notice of a request for a formal hearing, the attorney decision maker will forward the probate package to the appropriate ALJ.

(c) Within 120 days after the notice under § 15.203 has been sent and if the probable heirs have not requested a formal hearing with an ALJ, the attorney decision maker will assemble the probable heirs and hold an informal hearing to determine the distribution of the estate.

(d) Within 60 days after the informal hearing, the attorney decision maker will issue an written order in accordance with § 15.310.

§ 15.302 What law is used by the deciding official to determine the distribution of the trust estate?

Unless otherwise provided by federal law or a tribal inheritance code approved by the Secretary, the law of the state where the decedent was domiciled will determine the distribution of the estate.

§ 15.303 If the decedent owed me money, how do I file a claim against the estate?

(a) If you wish to make a claim against the estate of a decedent, you must submit to us an original and two copies of an itemized statement of the debt showing the amount of the original debt and the remaining balance on the date of the decedent's death.

(b) The itemized statement must state whether you have filed a claim against the decedent's non-trust assets.

(c) We must receive your claim within 60 days from the date the BIA receives the verification of the decedent's death in § 15.101 to be included as part of the probate package.

§ 15.304 How does the BIA deciding official determine if a claim will be allowed and paid?

(a) The BIA deciding official may direct the payment of some or all of the debts of the decedent after reviewing the probate package in accordance with the standards provided at 43 CFR 4.250 (c) through (g), and no claim prohibited by 43 CFR 4.250 will be paid.

(b) No claim will be paid from trust or restricted assets where the BIA deciding official is aware that the decedent's non-trust estate may be available to pay the claim.

§ 15.305 What claims will be paid first?

(a) The first claims to be paid, referred to as priority claims, are paid in order of priority. The priority claims are:

(1) Funeral expenses (including the cemetery marker);

(2) Medical expenses for the last illness;

(3) Nursing home or other care facility expenses;

(4) A claim of an Indian tribe;

(5) A claim reduced to judgment by a court of competent jurisdiction.

(b) After payment of the priority claims, the BIA deciding official may authorize all remaining claims, referred to as general claims.

§ 15.306 Can the BIA deciding official reduce the amount of claims?

The BIA deciding official has the discretion to decide that part or all of an otherwise valid claim is unreasonable, reduce the claim to a reasonable amount, or disallow the claim in its entirety.

(a) If a claim is reduced, the BIA deciding official will order payment only of the reduced amount.

(b) The BIA deciding official may reduce or disallow both priority claims and general claims.

§ 15.307 What if there is not enough money in the decedent's IIM account to pay all claims?

(a) If there is not enough money in the IIM account to pay all claims, the BIA deciding official will order payment of the priority claims first in the order identified in § 15.305.

(b) If there is not enough in the IIM account to pay the priority claims, the BIA deciding official may order payment of the priority claims on a pro rata (reduced) basis.

(c) If less than $1,000 remains in the IIM account after payment of priority claims is ordered, the general claims may be ordered paid on a pro rata basis or disallowed in their entirety.

§ 15.308 Will the BIA use future income to pay claims?

No. The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

§ 15.309 Will the BIA deciding official authorize payment of interest or penalties accruing after the date of death?

No. Interest or penalties charged against either priority or general claims after date of death will not be paid.

§ 15.310 When will the BIA deciding official issue a decision on the probate?

Within 60 days after an informal hearing has been held, the BIA deciding official will issue a written decision/order in accordance with § 15.311. Upon receipt of the decision/order, the BIA deciding official will send all interested parties a copy of the decision/order.

§ 15.311 What is in the written decision/order of the BIA deciding official?

The BIA deciding official issues a written decision/order that:

(1) In intestate cases: Lists the names, relationship to the decedent, and shares of the heirs; provides citations to the law of descent and distribution; or the fact that the decedent died leaving no legal heirs;

(2) In testate cases: approves or disapproves a will; interprets provisions of the approved will; provides the names and relationship of the beneficiaries to the decedent; describes the property each beneficiary is to receive;

(3) Allows or disallows claims against the estate; orders the amount of payment for all approved claims;

(4) States whether the heirs or beneficiaries are Indian or non-Indian;

(5) Determines any rights of dower, curtesy or homestead which may constitute a burden upon the interest of the heirs;

(6) Attaches a certified copy of the inventory of trust or restricted lands, if any; and

(7) Advises all interested parties of their appeal rights in accordance with subpart E of this part.

§ 15.312 What happens after the decision is made?

We will not pay claims, transfer title to land, or distribute trust cash assets for 75 days after the decision/order is mailed to the interested parties. After 75 days and if no appeal has been filed, the following actions will take place:

(a) The LTRO will change its land title records for the trust and restricted property in accordance with the decision/order; and

(b) The OTFM will pay claims and distribute the IIM account in accordance with the decision/order.

Subpart E—Appeals

§ 15.401 May I appeal the decision of the BIA deciding official?

You have a right to appeal the decision made by the BIA deciding official if you are an interested party and are affected by the probate decision.

§ 15.402 How do I file an appeal of the decision/order?

(a) To file an appeal of the decision/order, you may send or deliver a signed, written statement to the BIA deciding official where the probate package was sent that contains:

(1) The name of the decedent;

(2) A description of your relationship to the decedent;

(3) An explanation of why you are appealing; and

(4) Any errors you believe the BIA deciding official made.

(b) Within ten days from the receipt of the appeal, the BIA deciding official will notify all other interested parties of the appeal and forward the case to the appropriate ALJ.

§ 15.403 How long do I have to file an appeal?

(a) You must send or deliver your written appeal within 60 days of the date that appears on the decision mailed to you. If you mail your appeal, it must be postmarked within 60 days of the date of the decision.

(b) If the 60-day appeal period is missed, you still have a right to file a written statement with the BIA deciding official asking to have the decision changed for one or more of the following reasons:

(1) You did not receive notice of the probate;

(2) You have obtained new evidence or information after the decision was made; or

(3) You have evidence that was known at the time of the probate proceeding but was not included in the probate package.

(c) After we have received your request, we will forward it to the appropriate ALJ within ten days for action in accordance with 43 CFR Part 4, Subpart D.

§ 15.404 What will happen to the estate if an appeal is filed?

The BIA deciding official will refer your appeal to the appropriate ALJ in the same manner provided under 43 CFR § 4.210. Until the appeal has been resolved, the BIA will not distribute any of the decedent's property or modify the land title records and the OTFM will not pay claims or distribute any funds in the decedent's IIM account.

§ 15.405 How does the ALJ review a decision issued by a BIA deciding official?

The ALJ will conduct a *de novo* review; that is, conduct a formal hearing on the merits of the case.

Subpart F—Information and Records

§ 15.501 If I have a question about a probate that has been assigned to a BIA deciding official, may I contact the deciding official directly?

In order to avoid off-the-record communications with the BIA deciding official about your specific case that might be interpreted as an attempt to influence final decision on the probate case, you should direct your questions to the BIA deciding official's clerk or the probate specialist or probate clerk who prepared your probate package.

§ 15.502 How can I find out the status of a probate?

You may request information about the status of an Indian probate from any BIA agency or regional office.

§ 15.503 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program pursuant to Public Law 93–638 as amended; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§ 15.504 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 15.503(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 15.503(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, the tribe or tribal organization may be prevented from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

PART 114—SPECIAL DEPOSITS—[REMOVED AND RESERVED]

2. Under authority of 25 U.S.C. 2, 25 U.S.C. 9; Pub. L. 97–100; and Pub. L. 97–257, part 114 is removed and reserved.

PART 115—TRUST FUNDS FOR TRIBES AND INDIVIDUAL INDIANS

3. Part 115 is revised to read as follows:

Subpart A—Purpose, Definitions, and Public Information

Sec.
115.001 What is the purpose of this part?
115.002 What definitions do I need to know?

Subpart B—IIM Accounts

115.100 Osage Agency.
115.101 Individual accounts.
115.102 Adults under legal disability.
115.103 Payments by other Federal agencies.
115.104 Restrictions.
115.105 Funds of deceased Indians of the Five Civilized Tribes.
115.106 Assets of members of the Agua Caliente Band of Mission Indians.

115.107 Appeals.

Subpart C—IIM Accounts: Minors

115.400 Will a minor's IIM account always be supervised?
115.401 What is a minor's supervised account?
115.402 Will a minor have access to information about his or her account?
115.403 Who will receive information regarding a minor's supervised account?
115.404 What information will be provided in a minor's statement of performance?
115.405 How frequently will a minor's statement of performance be mailed?
115.406 Who provides an address of record for a minor's supervised account?
115.407 How is an address of record for a minor's supervised account changed?
115.408 May a minor's supervised account have more than one address on file with the BIA?
115.409 How is an address for a minor's residence changed?
115.410 What types of identification will the BIA or OTFM accept as ''verifiable photo identification''?
115.411 What if the individual making a request regarding a minor's supervised account does not have any verifiable photo identification?
115.412 Will child support payments be accepted for deposit into a minor's supervised account?
115.413 Who may receive funds from a minor's supervised account?
115.414 What is an authorized disbursement request?
115.415 How will an authorized disbursement from a minor's supervised account be sent?
115.416 Will the United States post office forward mail regarding a minor's supervised account to a forwarding address left with the United States post office?
115.417 What portion of funds in a minor's supervised account may be withdrawn under a distribution plan?
115.418 What types of trust funds may a minor have?
115.419 Who develops a minor's distribution plan?
115.420 When developing a minor's distribution plan, what information must be considered and included in the evaluation?
115.421 What information will be included in the copy of the minor's distribution plan that will be provided to OTFM?
115.422 As a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor, what are your responsibilities if you receive trust funds from a minor's supervised account?
115.423 If you are a custodial parent, a legal guardian, or an emancipated minor, may BIA authorize the disbursement of funds from a minor's supervised account without your knowledge?
115.424 Who receives a copy of the BIA-approved distribution plan and any amendments to the plan?
115.425 What will we do if we find that a distribution plan has not been followed or an individual has acted improperly in regard to his or her duties involving a minor's trust funds?
115.426 What is the BIA's responsibility regarding the management of a minor's supervised account?
115.427 What is the BIA's annual review process for a minor's supervised account?
115.428 Will you automatically receive all of your trust funds when you reach the age of 18?
115.429 What do you need to do when you reach 18 years of age to access your trust funds?
115.430 Will your account lose its supervised status when you reach the age of 18?
115.431 If you are an emancipated minor may you withdraw trust funds from your account?

Subpart D—IIM Accounts: Estate Accounts

115.500 When is an estate account established?
115.501 How long will an estate account remain open?
115.502 Who inherits the money in an IIM account when an account holder dies?
115.503 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?
115.504 If you have a life estate interest in income-producing trust assets, how will you receive the income?

Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account

115.600 If BIA decides to restrict your IIM account under § 115.102 or § 115.104, what procedures must the BIA follow?
115.601 Under what circumstances may the BIA restrict your IIM account through supervision or an encumbrance?
115.602 How will the BIA notify you or your guardian, as applicable, of its decision to restrict your IIM account?
115.603 What happens if BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason?
115.604 When will BIA authorize OTFM to place a restriction on your IIM account?
115.605 What information will the BIA include in its notice of the decision to restrict your IIM account?
115.606 What happens if you do not request a hearing to challenge BIA's decision to restrict your IIM account during the allotted time period?
115.607 How do you request a hearing to challenge the BIA's decision to restrict your IIM account?
115.608 If you request a hearing to challenge BIA's decision to restrict your IIM account, when will BIA conduct the hearing?
115.609 Will you be allowed to present testimony and/or evidence at the hearing?
115.610 Will you be allowed to present witnesses during a hearing?
115.611 Will you be allowed to question opposing witnesses during a hearing?
115.612 May you be represented by an attorney during your hearing?
115.613 Will the BIA record the hearing?
115.614 Why is the BIA hearing recorded?
115.615 How long after the hearing will BIA make its final decision?
115.616 What information will be included in BIA's final decision?
115.617 What happens when the BIA decides to supervise or encumber your IIM account after your hearing?
115.618 What happens if at the conclusion of the notice and hearing process we decide to encumber your IIM account because of an administrative error which resulted in funds that you do not own being deposited in your account or distributed to you or to a third party on your behalf?
115.619 If the BIA decides that the restriction on your IIM account will be continued after your hearing, do you have the right to appeal that decision?
115.620 If you decide to appeal the BIA's final decision pursuant to § 115.107, will the BIA restrict your IIM account during the appeal?

Subpart F—Trust Fund Accounts: General Information

115.700 Why is money held in trust for tribes and individual Indians?
115.701 What types of accounts are maintained for Indian trust funds?
115.702 What specific sources of money will be accepted for deposit into a trust account?
115.703 May we accept for deposit into a trust account money not specified in § 115.702?
115.704 May we accept for deposit into a trust account retirement checks/payments or pension fund checks/payments even though those funds are not specified in § 115.702?
115.705 May we accept for deposit into a trust account money awarded or assessed by a court of competent jurisdiction?
115.706 When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, what documentation is required to deposit the trust funds into a trust account?
115.707 Will the Secretary accept administrative fees for deposit into a trust account?
115.708 How quickly will trust funds received by the Secretary on behalf of tribes or individual Indians be deposited into a trust account?
115.709 Will an annual audit be conducted on trust funds?

Investments and Interests

115.710 Does money in a trust account earn interest?
115.711 How is money in a trust account invested?
115.712 What is the interest rate earned on money in a trust account?
115.713 When does money in a trust account start earning interest?

Subpart G—Tribal Accounts

115.800 When does OTFM open a tribal account?

115.801 How often will a tribe receive information about its trust account(s)?
115.802 May a tribe make a request to OTFM to receive information about its trust account more frequently?
115.803 What information will be provided in a statement of performance?
115.804 Will we account to a tribe for those trust funds the tribe receives through direct pay?
115.805 If a tribe is paid directly under a contract for the sale or use of trust assets, will we accept those trust funds for deposit into a tribal trust account?
115.806 How will the BIA assist in the administration of tribal judgment fund accounts?

Investing and Managing Tribal Trust Funds

115.807 Will OTFM consult with tribes about investments of tribal trust funds?
115.808 Could trust fund investments made by OTFM lose money?
115.809 May a tribe recommend to OTFM how to invest the tribe's trust funds?
115.810 May a tribe directly invest and manage its trust funds?
115.811 Under what conditions may a tribe redeposit funds with OTFM that were previously withdrawn under the Trust Reform Act?
115.812 Is a tribe responsible for its expenditures of trust funds that are not made in compliance with statutory language or other federal law?
115.813 Is there a limit to the amount of trust funds OTFM will disburse from a tribal trust account?
115.814 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for its intended purpose?

Withdrawing Tribal Trust Funds

115.815 How does a tribe request trust funds from a tribal trust account?
115.816 May a tribe's request for a withdrawal of trust funds from its trust account be delayed or denied?
115.817 How does OTFM disburse money to a tribe?

Unclaimed Per Capita Funds

115.818 What happens if an Indian adult does not cash his or her per capita check?
115.819 What steps will be taken to locate an individual whose per capita check is returned as undeliverable or not cashed within twelve (12) months of issuance?
115.820 May OTFM transfer money in a returned per capita account to a tribal account?

Subpart H—Special Deposit Accounts

115.900 Who receives the interest earned on trust funds in a special deposit account?
115.901 When will the trust funds in a special deposit account be credited or paid out to the owner of the funds?
115.902 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?
115.903 May cash bonds (e.g., performance bonds, appeal bonds, etc.) be deposited into a special deposit account?
115.904 Where earnest money is paid prior to Secretarial approval of a conveyance or contract instrument involving trust assets, may the BIA deposit that earnest money into a special deposit account?

Subpart I—Records

115.1000 Who owns the records associated with this part?
115.1001 How must records associated with this part be preserved?

Authority: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub. L. 87–283; Pub. L. 97–100; Pub. L. 97–257; Pub. L. 103–412; Pub. L. 97–458; 44 U.S.C. 3101 *et seq.*

Subpart A—Purpose, Definitions, and Public Information

§ 115.001 What is the purpose of this part?

This part sets forth guidelines for the Secretary of the Interior, including any tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. § 450f) or a Self-Governance compact (pursuant to 25 U.S.C. § 558cc), to carry out the trust duties owed to tribes and individual Indians to manage and administer trust assets for the exclusive benefit of tribal and individual Indian beneficiaries pursuant to federal law, including the American Indian Trust Fund Management Reform Act of 1994, Public Law 103–412, 108 Stat. 4239, 25 U.S.C. § 4001 (Trust Reform Act).

§ 115.002 What definitions do I need to know?

As used in this part:

Account holder means a tribe or a person who owns the funds in a tribal or Individual Indian Money (IIM) account that is maintained by the Secretary.

Account means a record of trust funds that is maintained by the Secretary for the benefit of a tribe or a person.

Administratively restricted account means an IIM account that is placed on temporary hold by OTFM where an account holder's current address of record is unknown or where more documentation is needed to make a distribution from an account.

Adult means an individual who has reached 18 years of age, except when the individual's tribe has determined the age for adulthood to be older than 18 for access to tribal trust fund per capita proceeds.

Adult in need of assistance means an individual who has been determined to be ''incapable of managing or administering his or her property, including his or her financial affairs'' either (a) through a BIA administrative process that is based on a finding by a licensed medical professional or licensed mental health professional, or (b) by an order or judgment of a court of competent jurisdiction.

BIA means the Bureau of Indian Affairs, Department of the Interior, or its authorized representative.

Bond means security for the performance of certain obligations or a guaranty of such performance as furnished by a third-party surety. As used in this part, bonds may include cash bonds, performance bonds, and surety bonds.

Court of competent jurisdiction means a federal or tribal court with jurisdiction; however, if there is no tribal court with jurisdiction, then a state court with jurisdiction.

Day means a calendar day unless otherwise specified.

Department means the Department of the Interior or its authorized representative.

Deposits mean receiving funds, ordinarily through a Federal Reserve Bank, for credit to a trust fund account.

Emancipated minor means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

Encumber or encumbrance means to attach trust assets held by the Secretary with a claim, lien, or charge that has been approved by the Secretary.

Encumbered account means a trust fund account where some portion of the proceeds are obligated to another party.

Estate account means an account for a deceased IIM account holder.

FOIA means the Freedom of Information Act, 5 U.S.C. § 552.

Guardian means a person who is legally responsible for the care and management of an individual and his or her estate. This definition includes, but is not limited to, conservator or guardian of the property. However, this definition does not apply to property subject to § 115.106 of this part.

Individual Indian Money (IIM) accounts means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary. There are three types of IIM accounts: unrestricted, restricted, and estate accounts.

Legal disability means the lack of legal capability to perform an act which includes the ability to manage or administer his or her financial affairs as determined by a court of competent jurisdiction or another federal agency where the federal agency has determined that the adult requires a representative payee and there is no legal guardian to receive federal benefits on his or her behalf.

MSW means a Master of Social Work degree from an accredited college or university.

Minor means an individual who is not an adult as defined in this part.

Non-compos mentis means a person who has been determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

OST means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

OTFM means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Privacy Act means the Federal Privacy Act, 5 U.S.C. § 552a.

Restricted fee land(s) means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

Secretary means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. § 450f) or a Self-Governance compact (pursuant to 25 U.S.C. § 558cc).

Special deposit account means a temporary account for the deposit of trust funds that cannot immediately be credited to the rightful account holders.

Supervised account means a restricted IIM account, from which all disbursements must be approved by the BIA, that is maintained for minors, emancipated minors, adults who are in need of assistance, adults who under legal disability, or adults who are non-compos mentis.

Tribal account or tribal trust account generally means a trust fund account for a federally recognized tribe that is maintained and held in trust by the Secretary.

Tribe means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the United States government for special programs and services provided by the Secretary to Indians because of their status as Indians. Tribe also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary.

Trust account means a tribal account, an IIM account, or a special deposit account for trust funds maintained by the Secretary.

Trust assets mean trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians.

Trust funds means money derived from the sale or use of trust lands, restricted fee lands, or trust resources and any other money that the Secretary must accept into trust.

Trust land(s) means any tract or interest therein, that the United States holds in trust status for the benefit of a tribe or an individual Indian.

Trust Reform Act means the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103–412, 108 Stat. 4239, 25 U.S.C. § 4001.

Trust resources means any element or matter directly derived from Indian trust property.

Unrestricted account means an IIM account in which an Indian account holder may determine the timing and amount of disbursements from the account.

Voluntary hold means a request by an individual Indian with an unrestricted IIM account to keep his or her trust funds in a trust account instead of having the trust funds automatically disbursed.

We or *Us* or *Our* means the Secretary as defined in this part.

You or *Your* means an IIM account holder.

Subpart B—IIM Accounts

§ 115.100 Osage Agency.

The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of part 117 of this subchapter.

§ 115.101 Individual accounts.

Except as otherwise provided in this part, adults shall have the right to withdraw funds from their accounts. Upon their application, or an application made in their behalf by the Secretary or his authorized representative, their funds shall be disbursed to them. All such disbursements will be made at such convenient times and places as the Secretary or his authorized representatives may designate.

§ 115.102 Adults under legal disability.

The funds of an adult who is non compos mentis or under other legal disability may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare, or the funds may be disbursed to a legal guardian or curator under such conditions as the Secretary or his authorized representative may prescribe.

§ 115.103 Payments by other Federal agencies.

Moneys received from the Veterans Administration or other Government agency pursuant to the Act of February 25, 1933 (47 Stat. 907; 25 U.S.C. 14), may be accepted and administered for the benefit of adult Indians under legal disability or minors for whom no legal guardian or fiduciary has been appointed.

§ 115.104 Restrictions.

Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of which the individual is a member, unless such payments are prohibited by acts of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code. Funds derived from the sale of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the Secretary or his authorized representative or subject to deductions specifically authorized or directed by acts of Congress, shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) or acts of Congress. The funds of an adult whom the Secretary or his authorized representative finds to be in need of assistance in managing his affairs, even though such adult is not non compos mentis or under other legal disability, may be disbursed to the adult, within his best interest, under approved plans. Such finding and the basis for such finding shall be recorded and filed with the records of the account. For rules

governing the payment of judgments from individual Indian money accounts, see § 11.208 of this chapter.

§ 115.105 Funds of deceased Indians of the Five Civilized Tribes.

Funds of a deceased Indian of the Five Civilized Tribes may be disbursed to pay ad valorem and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary or his authorized representative prior to death of decedent, expenses of last sickness and burial and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to part 16 of this chapter.

§ 115.106 Assets of members of the Agua Caliente Band of Mission Indians.

(a) The provisions of this section apply to money or other property, except real property, held by the United States in trust for such Indians, which may be used, advanced, expended, exchanged, deposited, disposed of, invested, and reinvested by the Director, Palm Springs Office, in accordance with the Act of October 17, 1968 (Pub. L. 90–597). The management or disposition of real property is covered in other parts of this chapter.

(b) Investments made by the Director, Palm Springs Office, under the Act of October 17, 1968, supra, shall be of such a nature as will afford reasonable protection of the assets of the individual Indian involved. The Director is authorized to enter into contracts for the management of the assets (except real property) of individual Indians. The consent of the individual Indian concerned must be obtained prior to the taking of actions affecting his assets, unless the Director determines, under the provisions of section (e) of the Act, that consent is not required.

(c) The Director may, consistent with normal business practices, establish appropriate fees for reports he requires from guardians, conservators, or other fiduciaries appointed under State law for members of the Band.

§ 115.107 Appeals.

Appeals from an action taken by an official of the Bureau of Indian Affairs may be taken pursuant to 25 CFR part 2, subject to the terms of subpart E.

Subpart C—IIM Accounts: Minors

§ 115.400 Will a minor's IIM account always be supervised?

Yes, all IIM accounts established by BIA for minors will be a supervised by the BIA.

§ 115.401 What is a minor's supervised account?

A minor's supervised account is a restricted IIM account from which all disbursements must be made pursuant to a distribution plan approved by the BIA that is established for:

(a) A minor, or

(b) An emancipated minor.

§ 115.402 Will a minor have access to information about his or her account?

A minor will not have access to information about his or her IIM account without approval of the custodial parent(s) or legal guardian. However, an emancipated minor will have access to information about his or her IIM account.

§ 115.403 Who will receive information regarding a minor's supervised account?

(a) The parent(s) with legal custody of the minor or the minor's legal guardian will receive a minor's statement of performance at the address of record for the minor's supervised account.

(b) An emancipated minor will receive his or her statement of performance at the address of record for the minor's supervised account.

§ 115.404 What information will be provided in a minor's statement of performance?

A minor's statement of performance will identify the source, type, and status of the funds deposited and held in the account; the beginning balance; the gains and losses; receipts and disbursements, if any; and the ending balance of the quarterly statement period for the minor's supervised account.

§ 115.405 How frequently will a minor's statement of performance be mailed?

We will mail a minor's statement of performance to the address of record quarterly, within and no later than 20 business days after the close of the quarterly statement period.

§ 115.406 Who provides an address of record for a minor's supervised account?

(a) The custodial parent or the legal guardian must provide an address to the BIA and this address will be the address of record for the minor's supervised account. Where applicable, a parent or legal guardian must provide a copy of the custodial order or guardianship order from a court of competent jurisdiction when providing the address of record for the minor's supervised IIM account.

(b) The emancipated minor must provide his or her address of record to the BIA.

(c) Upon receipt of the change of address of record from the parent or legal guardian, the BIA must provide the change of the address of record to the OTFM.

§ 115.407 How is an address of record for a minor's supervised account changed?

(a) To change an address of record for a minor's supervised IIM account, a custodial parent(s), legal guardian, or emancipated minor must provide BIA with the following information:

(1) The minor's or emancipated minor's name;

(2) The name of the custodial parent(s) or legal guardian, if applicable;

(3) A custody order from a court of competent jurisdiction or a copy of a guardianship, if applicable;

(4) The new address of the custodial parent(s), legal guardian, or emancipated minor; and

(5) The signature, mark or thumb print of a custodial parent, legal guardian, or emancipated minor that has been notarized by a notary public and/or witnessed by a DOI employee who has been shown verifiable photo identification. See § 115.410

(b) When requesting a change of an address of record, the following information will further assist us to identify the minor's account:

(1) The minor's or emancipated minor's IIM account number;

(2) The minor's or emancipated minor's date of birth;

(3) The minor's or emancipated minor's tribal enrollment number; and

(4) The minor's or emancipated minor's social security number.

§ 115.408 May a minor's supervised account have more than one address on file with the BIA?

Yes, a minor's supervised account may have more than one address on file with the BIA. We request that the parent, legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor, notify us of the following addresses for the minor:

(a) The minor's residence;

(b) The address of record where the statement of performance will be mailed;

(c) The address where disbursement checks will be mailed or financial institution information for direct deposits of trust funds as authorized under an approved distribution plan.

§ 115.409 How is an address for a minor's residence changed?

(a) To change an address for a minor's residence, the custodial parent, legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor must provide BIA with the following information:

(1) The minor's name;
(2) The name of the custodial parent(s) or legal guardian;
(3) A copy of a custodial order from a court of competent jurisdiction or a guardianship order, where applicable;
(4) The new address of the minor's residence; and
(5) The signature, mark or thumb print of the individual who is providing the updated address for the minor's residence that has been notarized by a notary public and/or witnessed by a DOI employee who has been shown verifiable photo identification. See § 115.410

(b) When requesting a change of an address for a minor's residence, the following information will further assist us to identify the minor's account:
(1) The minor's IIM account number;
(2) The minor's date of birth;
(3) The minor's tribal enrollment number (if known); and
(4) The minor's social security number (where known).

§ 115.410 What types of identification will the BIA or OTFM accept as ''verifiable photo identification''?

BIA or OTFM will accept the following forms of identification as ''verifiable photo identification'':
(a) A valid driver's license;
(b) A government-issued photo identification card, such as a passport, security badge, etc.; or
(c) A tribal photo identification card.

§ 115.411 What if the individual making a request regarding a minor's supervised account does not have any verifiable photo identification?

If the individual making a request regarding a minor's supervised account does not have any verifiable photo identification, the individual may make a request in person at the BIA and we will talk with the individual and review information in the minor's file to see if we can attest to the individual's identity. If we cannot establish the identity of the individual, we will not accept the request.

§ 115.412 Will child support payments be accepted for deposit into a minor's supervised account?

The Secretary will not accept child support payments for deposit into a minor's supervised account.

§ 115.413 Who may receive funds from a minor's supervised account?

A custodial parent, a legal guardian, a person who has been recognized by the BIA as having control and custody of the minor, or an emancipated minor may be eligible to withdraw funds from a minor's supervised account if there is an authorized disbursement request that is based upon the terms of a BIA-approved distribution plan.

§ 115.414 What is an authorized disbursement request?

An authorized disbursement request is the form or letter that must be approved by the BIA that specifies the funds to be disbursed from an IIM account. The authorized disbursement request may not be issued to disburse funds from a minor's supervised account unless an approved distribution plan exists, the amount to be disbursed is in conformity with the distribution plan and the disbursement will be made to an individual or third party specified in the plan.

§ 115.415 How will an authorized disbursement from a minor's supervised account be sent?

OTFM will make an authorized disbursement based on the approved distribution plan from a minor's supervised account by:
(a) Making a direct deposit to a specified account at a financial institution (a direct deposit into the specified account will eliminate lost, stolen or damaged checks and will also eliminate delays associated with mailing the check);
(b) Mailing a check to the address of record or to a specified disbursement address; or
(c) Mailing a check to a specified third party's address.

§ 115.416 Will the United States post office forward mail regarding a minor's supervised account to a forwarding address left with the United States post office?

(a) Federal law does not allow the United States post office to forward checks that are issued by the federal government. Therefore, a check from a minor's supervised account will not be forwarded to an address left with the United States post office. The new address of record must be provided directly to BIA.
(b) Where a forwarding address has been provided to the United States post office, the United States post office will forward a statement of performance and general correspondence regarding a minor's supervised account that is mailed to the minor's address of record for a limited time period. However, it is the responsibility of a custodial parent, legal guardian, or emancipated minor to give BIA the new address of record for the minor's supervised account.

§ 115.417 What portion of funds in a minor's supervised account may be withdrawn under a distribution plan?

Trust money in a minor's supervised account will not be distributed without a review of other resources that may be available to meet the needs of the minor. Any trust funds of a minor that are distributed must be used for the direct benefit of the minor and in accordance with any additional limitations (*e.g.,* statutory, court order, tribal resolution, etc.) placed on the use of specific trust funds. Allowable uses may include health, education, or welfare when based upon a justified unmet need. The BIA will require receipts for expenditures of funds disbursed from a minor's account to a custodial parent, legal guardian, person who has been recognized by the BIA as having control and custody of the minor, or an emancipated minor.

§ 115.418 What types of trust funds may a minor have?

A minor may have one or more of the following types of trust funds:
(a) Judgment per capita funds: Withdrawals may only be made upon BIA approval of an application made under Public Law 97–458. See 25 CFR 1.2.
(b) Tribal per capita funds: Withdrawals may only be made under a BIA approved distribution plan and in accordance with the terms of the tribe's per capita resolution/document.
(c) Other trust funds: Withdrawals may only be made under a minor's BIA-approved distribution plan that is based on a justified unmet need for the minor's health, education, or welfare.
(d) Funds from other federal agencies (e.g., SSA, SSI, VA) received for the benefit of the minor: Withdrawals must be made only under a BIA-approved distribution plan that must be consistent with the disbursing agency's (e.g., SSA, SSI, VA) allowable uses for the funds.

§ 115.419 Who develops a minor's distribution plan?

A social service provider will develop a minor's distribution plan for approval by the BIA after evaluating the needs of the minor in consultation with a custodial parent, a legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or emancipated minor. A minor's distribution plan may only provide for those expenditures outlined in part § 115.417.

§ 115.420 When developing a minor's distribution plan, what information must be considered and included in the evaluation?

When developing a minor's distribution plan, the following information must be considered and included in the evaluation:
(a) Documentation which establishes who has physical custody of the minor

(e.g., home visits, school records, medical records, etc.);

(b) A copy of any custodial orders or guardianship orders from a court of competent jurisdiction;

(c) The name(s) of the person and his or her relationship to the minor, if any, who make a request for a disbursement from the minor's account;

(d) An evaluation of other resources, including parental income, that may be available to meet the unmet needs of the minor;

(e) A list of the amounts, purposes, and dates for which disbursements will be made;

(f) The name(s) of the person to whom disbursements may be made, including, as applicable:

(1) A custodial parent;

(2) A legal guardian;

(3) The person who has been recognized by the BIA as having control and custody of the minor;

(4) An emancipated minor; and/or

(5) Any third parties to whom the BIA will make direct payment for goods or services provided to the minor and supported by an invoice or bill of sale;

(g) The date(s) (at least every six months) when the custodial parent, the legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or the emancipated minor must provide receipts to the BIA to show that expenditures were made in accordance with the approved distribution plan;

(h) Additional requirements and justification for those requirements, as necessary to ensure that any distribution(s) will benefit the minor;

(i) The dates the disbursement plan was developed, approved, and reviewed, and the date for the next scheduled review;

(j) The date(s) the distribution plan was amended and an explanation for any amendment(s) to the distribution plan, when an amendment is necessary;

(k) The signature of the BIA official approving the plan with the certification that the plan is in the best interest of the account holder; and

(l) The signature(s) of the custodial parent, legal guardian, with date(s) signed, certifying that he or she has been consulted and has agreed to the terms of the evaluation and the distribution plan.

§ 115.421 What information will be included in the copy of the minor's distribution plan that will be provided to OTFM?

A minor's distribution plan must contain the following:

(a) A copy of any custodial order or guardianship order from a court of competent jurisdiction;

(b) A list of the amounts, purposes, and dates for which disbursements will be made;

(c) The name(s) of the person(s) to whom disbursements may be made, including, as applicable:

(1) A custodial parent;

(2) A legal guardian;

(3) The person who has been recognized by the BIA as having control and custody of the minor and the address of that person;

(4) An emancipated minor; and/or

(5) Any third parties and the address(es) of the third parties to whom the direct payment will be made for goods or services provided to the minor and supported by an invoice or bill of sale, where applicable;

(d) The date that the disbursement plan was approved and the expiration date of the distribution plan; and

(e) The date and signature of the BIA official approving the plan with a certification that the plan is in the best interest of the account holder.

§ 115.422 As a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor, what are your responsibilities if you receive trust funds from a minor's supervised account?

If you are a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor who receives funds from a minor's supervised account, you must:

(a) Consult with the social service provider on the development of an evaluation;

(b) Sign an acknowledgment that you have reviewed the evaluation;

(c) Follow the terms of a distribution plan approved by the BIA;

(d) Follow any applicable court order;

(e) Provide receipts to the social services provider in accordance with terms of the evaluation for all expenses paid out of the minor's IIM funds;

(f) Review the statements of performance for the supervised account for discrepancies, if applicable;

(g) File tax returns on behalf of the account holder, if applicable; and

(h) Notify the social service provider of any change in circumstances that impairs your performance of your obligations under this part or inform the social service provider of any information regarding misuse of a minor's trust funds.

§ 115.423 If you are a custodial parent, a legal guardian, or an emancipated minor, may BIA authorize the disbursement of funds from a minor's supervised account without your knowledge?

At the Secretary's discretion, the BIA may authorize the disbursement of funds from a minor's supervised account for the benefit of the minor.

§ 115.424 Who receives a copy of the BIA-approved distribution plan and any amendments to the plan?

The BIA-approved distribution plan will be provided to:

(a) The custodial parent; or

(b) A legal guardian; or

(c) At the Secretary's discretion, in unusual circumstances, to a family member who has been recognized as having control and custody of the minor; or

(d) An emancipated minor; and

(e) OTFM.

§ 115.425 What will we do if we find that a distribution plan has not been followed or an individual has acted improperly in regard to his or her duties involving a minor's trust funds?

If we find that a distribution plan has not been followed or that a custodial parent, a legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor has failed to satisfactorily account for expenses or has not used the minor's funds for the primary benefit of the minor, we will:

(a) Notify the individual; and

(b) Take action to protect the interests of the minor, which may include:

(1) Referring the matter for civil or criminal legal action;

(2) Demanding repayment from the individual who has improperly expended trust funds or failed to account for the use of trust funds;

(3) Liquidating a bond posted by the legal guardian, where applicable, to recover improperly expended trust funds up to the amount of the bond; or

(4) Immediately modifying the distribution plan for up to sixty days, including suspending the authority of the individual to receive further disbursements.

§ 115.426 What is the BIA's responsibility regarding the management of a minor's supervised account?

The BIA's responsibility in regard to the management of a minor's supervised account is to:

(a) Review and approve the evaluation and the distribution plan;

(b) Authorize OTFM to disburse IIM funds in accordance with an approved distribution plan; and

(c) Conduct annual reviews of case records for minors' supervised accounts

to ensure that the social service providers have managed the accounts in accordance with the approved evaluation and distribution plan.

§ 115.427 What is the BIA's annual review process for a minor's supervised account?

A BIA social worker with an MSW will conduct an annual review of minors' supervised accounts by:

(a) Verifying that all receipts for disbursements made under a distribution plan were collected in accordance with the terms specified in the evaluation;

(b) Reviewing the receipts for disbursements made from a minor's supervised account to ensure that all expenditures were made in accordance with the distribution plan;

(c) Reviewing all case worker reports and notes;

(d) Reviewing account records to insure that withdrawals and payments were made in accordance with the distribution plan;

(e) Verifying current addresses, including the address of record, the address of the minor's residence, and the disbursement address; and

(f) Deciding whether the distribution plan needs to be modified.

§ 115.428 Will you automatically receive all of your trust funds when you reach the age of 18?

No, we will not automatically send your trust funds to you when you reach the age of 18.

§ 115.429 What do you need to do when you reach 18 years of age to access your trust funds?

You must contact OTFM to request withdrawal of any or all of your trust funds that may be available to you. OTFM may require certain information from you to verify your identity, etc. prior to the release of your trust funds. All signatures must be notarized by a notary public or witnessed by a DOI employee. In addition, if you choose to have a check mailed to you, you must provide us with your address of record. If you choose to have your trust funds electronically transferred to you, you must provide your financial institution account information to OTFM.

§ 115.430 Will your account lose its supervised status when you reach the age of 18?

Your account will no longer be supervised when you reach the age of 18 unless statutory language or a tribal resolution specifies an age other than 18 years of age for access to specific trust funds. However, if a court of competent jurisdiction has found you to be non-compos mentis, under legal disability, or the BIA has determined you to be an adult in need of assistance, your account will remain supervised and you will be notified in accordance with subpart E.

§ 115.431 If you are an emancipated minor may you withdraw trust funds from your account?

If you are an emancipated minor, you may have access to some or all of your trust funds as follows:

(a) For judgment per capita funds: you may not make withdrawals from your account until you have reached the age specified in the judgment. Exceptions are only granted upon the approval of an application made under Public Law 97–458. See 25 CFR 1.2.

(b) Tribal per capita funds: access to these funds will be determined by tribal resolution.

(c) Other trust funds: You may be able to have supervised access to some or all of your funds, but the BIA must approve all requests for withdrawals from your account. You must work with the BIA to develop a distribution plan to access the funds in your account. In no instance will the BIA allow an emancipated minor to make unsupervised withdrawals.

(d) For funds from other federal agencies (*e.g.,* SSA, SSI, VA), you may be able to receive funds directly, but you must contact and make arrangements with the other federal agency. Direct receipt of funds from another federal agency will not change the supervised status of an emancipated minor's trust account.

Subpart D—IIM Accounts: Estate Accounts

§ 115.500 When is an estate account established?

An estate account is established when we receive notice of an account holder's death.

§ 115.501 How long will an estate account remain open?

An estate account will remain open until the funds have been distributed in accordance with the distribution and/or probate order.

§ 115.502 Who inherits the money in an IIM account when an account holder dies?

At the end of all probate procedures, funds remaining in a decedent's estate account will be distributed from the decedent's estate account and paid directly to or deposited into an IIM account of the decedent's heirs, beneficiaries, or other persons or entities entitled by law to receive the funds, where applicable. See 25 CFR part 15.

§ 115.503 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?

(a) If you are responsible for making the funeral arrangements of a decedent who had an IIM account and you have an immediate need for emergency assistance to pay for funeral arrangements prior to burial, you may make a request to the BIA for up to $1,000 from the decedent's IIM account if the decedent's IIM account has more than $2,500 in the account at the date of death.

(b) You must apply for this assistance and submit to the BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs up to $1,000 that are necessary for the burial services.

(d) We will make payments directly to the providers of the service(s).

§ 115.504 If you have a life estate interest in income-producing trust assets, how will you receive the income?

If you have a life estate interest in income-producing trust assets, which is earning income, OTFM will open an IIM-life estate account for you and funds will be distributed after BIA has certified ownership of the trust funds.

Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account

§ 115.600 If BIA decides to restrict your IIM account under § 115.102 or § 115.104, what procedures must the BIA follow?

If under § 115.102 or § 115.104, the BIA has decided to limit your access to your IIM account (*i.e.,* decided to supervise the IIM account), or if the BIA has decided to pay creditors with funds from your IIM account, including creditors with judgments from Courts of Indian Offenses for which preliminary procedures are prescribed in 25 CFR 11.208, the BIA must notify you or your guardian, as applicable, to provide you or your guardian, as applicable, with an opportunity to challenge the BIA's decision to restrict your IIM account as specified in subpart E.

§ 115.601 Under what circumstances may the BIA restrict your IIM account through supervision or an encumbrance?

(a) The BIA may restrict your IIM account through supervision if the BIA:

(1) Receives an order from a court of competent jurisdiction that you are non-compos mentis; or

(2) Receives an order or judgment from a court of competent jurisdiction that you are an adult in need of assistance because you are ''incapable of

managing or administering property, including your financial affairs;'' or

(3) Determines through an administrative process that you are an adult in need of assistance based on a finding by a licensed medical or mental health professional that you are ''incapable of managing or administering property, including your financial affairs;'' or

(4) Receives information from another federal agency that you are under a legal disability and that the agency has appointed a representative payee to receive federal benefits on your behalf.

(b) The BIA may restrict your IIM account through an encumbrance if the BIA:

(1) Receives an order from a court of competent jurisdiction awarding child support from your IIM account; or

(2) Receives from a third party:

(i) A copy of the original contract between you and the third party in which you used your IIM funds as security/collateral for the transaction;

(ii) A copy of the document showing that the BIA approved in advance the use of your IIM funds as security/collateral for the contract;

(iii) Proof of your default on the contract according to the terms of the contract; and

(iv) A copy of the original assignment of IIM income as security/collateral for the contract that is signed and dated by you and is notarized;

(3) Receives a money judgment from a Court of Indian Offenses pursuant to 25 CFR 11.208 or under any tribal law and order code;

(4) Is provided documentation showing that BIA or OTFM caused an administrative error which resulted in a deposit into your IIM account, or a disbursement to you, or to a third party on your behalf; or

(5) Is provided with proof of debts owed to the United States pursuant to § 115.104 of this part.

§ 115.602 How will the BIA notify you or your guardian, as applicable, of its decision to restrict your IIM account?

The BIA will notify you or your guardian, as applicable, of its decision to restrict your IIM account by:

(a) United States certified mail to your address of record;

(b) Personal delivery to you or your guardian, as applicable, or to your address of record;

(c) Publication for four consecutive weeks in your tribal newspaper if your whereabouts are unknown and in the local newspaper serving your last known address of record; or

(d) United States certified mail to you in care of the warden, if you are incarcerated. The BIA may send a copy of the notification to your attorney, if known.

§ 115.603 What happens if BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason?

If BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason, the BIA will remove the restriction on your account, which was placed five days after the notice was mailed, and will publish a notice in accordance with § 115.602(c) and § 115.605(b).

§ 115.604 When will BIA authorize OTFM to place a restriction on your IIM account?

BIA will authorize OTFM to place a restriction on your IIM account after providing OTFM with supporting documentation (i.e., receipts, notice of publication, etc.) of the following:

(a) Five (5) days after the date BIA mails you or your guardian, as applicable, notice of its decision to restrict your account by United States certified mail to your address of record;

(b) One (1) day after BIA has made personal delivery to you or your guardian, as applicable, or to your address of record of its notice of the BIA's decision to restrict your account; or

(c) Five (5) days after the fourth publication of the public notice of BIA's decision to restrict your account.

§ 115.605 What information will the BIA include in its notice of the decision to restrict your IIM account?

(a) When the BIA provides notice of its decision to restrict your IIM account by certified mail or personal delivery to you or your guardian, as applicable, the notice must contain:

(1) The name on the IIM account;

(2) The reason for the restriction;

(3) The amount to be encumbered, if applicable;

(4) A statement that your IIM account will be restricted 5 days after the date the notice was sent United States certified mail to your address of record;

(5) An explanation that you have 40 days from the date the notice was sent United States certified mail to request a hearing to challenge BIA's decision to restrict your IIM account;

(6) An explanation of how to request a hearing;

(7) A statement that the BIA will conduct the hearing and that you are assured a fair hearing;

(8) A copy of the fair hearing guidelines;

(9) A statement that you may contact the BIA to authorize immediate payment from your IIM account to pay the claim, if applicable;

(10) The address and phone number of the BIA office that made the decision to restrict your IIM account and provided the notice; and

(11) Other information as may be determined appropriate by the BIA.

(b) When the BIA provides public notice of its decision to restrict your account, the only information the public notice will include is:

(1) The name on the account;

(2) The date of first publication of the public notice;

(3) A statement that the BIA has decided to place a restriction on your IIM account;

(4) A statement that the public notice will be published once a week for four consecutive weeks;

(5) A statement that the BIA will place a restriction on your account five (5) days after the date of the fourth publication of the public notice;

(6) A statement that your opportunity to request a hearing to challenge BIA's decision to restrict your account will expire 30 days after the date of the fourth publication of the public notice; and

(7) An address and telephone number of the BIA office publishing the notice to request further information and instructions on how to request a hearing.

§ 115.606 What happens if you do not request a hearing to challenge BIA's decision to restrict your IIM account during the allotted time period?

If you or your guardian, as applicable, do not request a hearing to challenge BIA's decision to restrict your IIM account during the allotted time period, BIA's decision to restrict your IIM account will become final. BIA will follow the procedures outlined in § 115.616 through § 115.618, and § 115.620, as applicable.

§ 115.607 How do you request a hearing to challenge the BIA's decision to restrict your IIM account?

You or your guardian, as applicable, must request a hearing to challenge the BIA's decision to restrict your IIM account from the BIA office that made the decision and notified you of the restriction. Your request must:

(a) Be in writing;

(b) Specifically request a hearing to challenge the restriction; and

(c) Be hand delivered to the BIA office or postmarked within:

(i) 40 days of the date that BIA's notice was sent United States certified

mail or personally delivered to the address of record, or

(ii) 30 days of the date of the final publication of the public notice.

§ 115.608 If you request a hearing to challenge BIA's decision to restrict your IIM account, when will BIA conduct the hearing?

BIA will conduct a hearing within ten (10) working days from its receipt of a written request from you or your guardian, as applicable, for a hearing to challenge the decision to restrict your IIM account.

§ 115.609 Will you be allowed to present testimony and/or evidence at the hearing?

Yes, you or your guardian, as applicable, will be provided the opportunity to present testimony and/or evidence as to the reasons the BIA should not restrict your IIM account, including information showing how an encumbrance may create an undue financial hardship, if applicable. You may not challenge a court order or judgment in this proceeding. However, if you have appealed an order or judgment from a court of competent jurisdiction, you or your guardian, as applicable, may present evidence of your appeal and the BIA hearing will be postponed until there is a final order from the court. The restriction on your IIM account will remain in place until after the hearing is concluded.

§ 115.610 Will you be allowed to present witnesses during a hearing?

Yes, you or your guardian, as applicable, may present witnesses during a hearing. You are responsible for any and all expenses which may be associated with presenting witnesses.

§ 115.611 Will you be allowed to question opposing witnesses during a hearing?

Yes, you or your guardian, as applicable, may question all opposing witnesses testifying during your hearing. You may also present witnesses to challenge opposing witness testimony.

§ 115.612 May you be represented by an attorney during your hearing?

Yes, you may have an attorney or other person represent you during your hearing. However, you are responsible for any and all expenses associated with having an attorney or other person represent you.

§ 115.613 Will the BIA record the hearing?

Yes, the BIA will record the hearing.

§ 115.614 Why is the BIA hearing recorded?

The BIA hearing will be recorded so that it will be available for review if the hearing process is appealed under § 115.107. The BIA hearing record must be preserved as a trust record.

§ 115.615 How long after the hearing will BIA make its final decision?

BIA will make its final decision within 10 business days of the end of the hearing.

§ 115.616 What information will be included in BIA's final decision?

BIA's final written decision to the parties involved in the proceeding will include:

(a) BIA's decision to remove or retain the restriction on the IIM account;

(b) A detailed justification for the supervision or encumbrance of the IIM account, where applicable;

(c) The amount(s) to be paid, the name and address of a third party to whom payment will be made, and the time period for repayment established under 617(a) of this part, where applicable;

(d) Any provision to allow for distributions to the account holder because of an undue financial hardship created by the encumbrance, if applicable; and

(e) Any other information the hearing officer deems necessary.

§ 115.617 What happens when the BIA decides to supervise or encumber your IIM account after your hearing?

BIA will provide OTFM with a copy of the distribution plan, after the BIA decides to:

(a) Supervise your IIM account. BIA social services staff will consult with you and/or your guardian to develop a distribution plan. Upon BIA approval, the distribution plan will be valid for one year.

(b) Encumber your IIM account. BIA will review your account balance and your future IIM income to develop a distribution plan that establishes the amount(s) to be paid and the dates payment(s) will be made to the specified party. Payments may need to be made over the course of one or more years if the amount owed to the specified party is greater than your current IIM account balance.

§ 115.618 What happens if at the conclusion of the notice and hearing process we decide to encumber your IIM account because of an administrative error which resulted in funds that you do not own being deposited in your account or distributed to you or to a third party on your behalf?

If we decide at the conclusion of the notice and hearing process to encumber your account because of an administrative error which resulted in funds that you do not own being deposited into your IIM account or distributed to you or to a third party on your behalf, we will consult with you or your guardian, as applicable, to determine how the funds will be re-paid.

§ 115.619 If the BIA decides that the restriction on your IIM account will be continued after your hearing, do you have the right to appeal that decision?

Yes, if the BIA decides after your hearing to continue the restriction on your IIM account, you or your guardian, as applicable, have the right to appeal the decision under the procedures proscribed in § 115.107.

§ 115.620 If you decide to appeal the BIA's final decision pursuant to § 115.107, will the BIA restrict your IIM account during the appeal?

Yes, if under § 115.107 you or your guardian, as applicable, decide to appeal the BIA's final decision to:

(a) Supervise your IIM account, your IIM account will remain restricted during the appeal period.

(b) Encumber your IIM account, your IIM account will remain restricted up to the amount at issue during the appeal period. If your account balance is greater than the amount encumbered, those funds will be available to you upon request to and by approval of the Secretary.

Subpart F—Trust Fund Accounts: General Information

§ 115.700 Why is money held in trust for tribes and individual Indians?

Congress has passed a number of laws that require the Secretary to establish and administer trust fund accounts for Indian tribes and certain individual Indians who have an interest(s) in trust lands, trust resources, or trust assets.

§ 115.701 What types of accounts are maintained for Indian trust funds?

Indian trust funds are deposited in tribal accounts, Individual Indian Money (IIM) accounts, and special deposit accounts. The illustration below provides information on each of these trust accounts.

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Types of Trust Fund Accounts			Descriptions
Individual Indian Money (IIM) Accounts	Unrestricted IIM accounts		There are no restrictions on these accounts. Funds may be left on deposit, or paid to the account holder based upon instructions by the account holder.
	Restricted IIM accounts:	Administratively Restricted	A temporary hold is placed on an account by OTFM where an address of record for an account holder is unknown or where more documentation is needed to make a distribution from an account.
		Supervised	A restriction is placed on the account by the BIA and funds from these accounts may only be withdrawn under a BIA approved distribution plan. The following account holders will have supervised accounts: • minors, • emancipated minors, • adults who are non-compos mentis, • adults in need of assistance; and/or • adults under legal disability as defined in this part.
		Encumbered	A restriction is placed on the account by the BIA until money owed from an the account is paid to a specified party. The account holder may withdraw any money available in the account that is above the amount owed to specified parties.
	IIM Estate accounts		An account for a deceased IIM account holder.
Tribal Accounts			Generally, an account for a federally recognized tribe.
Special Deposit Accounts			An account for the temporary deposit of trust funds that cannot be distributed immediately to its rightful owners.

SOURCES	TRUST ACCOUNTS				
	Tribal	Individual Indian Money (IIM)			
		Unrestricted IIM Accounts	Restricted IIM Accounts		
			Administratively restricted	Supervised	Encumbered
Payments from the United States as a Result of —					
Federal laws requiring funds to be deposited in trust accounts.	✓	✓	✓	✓	✓
Settlement of a claim related to trust assets that requires the funds to be deposited in trust accounts	✓	✓	✓	✓	✓
A final order from a United States court for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
Unobligated or unspent forestry funds specifically appropriated for the benefit of such Indian tribe	✓				
Designation of the BIA as the representative payee (by another federal agency) to receive certain Federal assistance payments, such as VA benefits, Social Security, or Supplemental Security Income, on behalf of an individual Indian because there is no legal guardian for that individual			✓	✓	
Payments resulting from —					
Money directly derived from the title conveyance (e.g. sale, probate, condemnation) or use of trust lands or restricted fee lands or trust resources, including any late payment penalties, when paid directly to the Secretary on behalf of the account holder	✓	✓	✓	✓	✓
Penalties for trespass on trust lands or restricted fee lands	✓	✓	✓	✓	✓

Default or breach of the terms of a contract for the sale or use of trust lands, restricted fee lands, or trust resources arising from cash performance or surety bonds, or other source(s)	✓	✓	✓	✓	✓
A final order from a court of competent jurisdiction for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts	✓	✓	✓	✓	✓
Deposits from an Indian Tribe —					
Redeposit of tribal trust funds previously withdrawn under an investment plan submitted and approved pursuant to the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 108 Stat. 4239, 25 U.S.C. § 4001 (Trust Reform Act)	✓				
Where a tribe under 25 U.S.C. 450f et seq. has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual	✓	✓	✓	✓	✓
Legislative settlement funds or judgment funds withdrawn, but not spent, for a specific project. Documentation showing source of funds is required.	✓				
Deposits from other sources --					
Interest earned on trust fund deposits	✓	✓	✓	✓	✓
Disbursements of tribal trust funds held by OTFM to tribal members as per capita payments	✓			✓	
As permitted by law (25 U.S.C. § 3109) to be deposited into an Indian forest land assistance account	✓				

Funds derived directly from trust lands, restricted fee lands, or trust resources that are presented to the Secretary, on behalf of the tribe or individual Indian owner(s) of the trust asset, by the payor after being mailed to the owner(s) as required by contract (i.e., direct pay) and returned by mail to the payor as undeliverable	✓	✓	✓		✓

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§ 115.703 May we accept for deposit into a trust account money not specified in § 115.702?

No, we will not accept funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

§ 115.704 May we accept for deposit into a trust account retirement checks/payments or pension fund checks/payments even though those funds are not specified in § 115.702?

No, we will not accept retirement checks/payments or pension fund checks/payments or any funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

§ 115.705 May we accept for deposit into a trust account money awarded or assessed by a court of competent jurisdiction?

We will accept money awarded or assessed by a court of competent jurisdiction for a cause of action directly related to trust assets to be deposited into a trust account. Other funds awarded by a court of competent jurisdiction may not be deposited into a trust account.

§ 115.706 When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, what documentation is required to deposit the trust funds into a trust account?

When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, we must receive the funds awarded as stipulated in the court order and a copy of the court's order.

§ 115.707 Will the Secretary accept administrative fees for deposit into a trust account?

No. The Secretary will not accept administrative fees for deposit into a trust account because administrative fees are not trust funds. However, administrative fees may be deposited into a non-interest bearing, non-trust account with the BIA.

§ 115.708 How quickly will trust funds received by the Secretary on behalf of tribes or individual Indians be deposited into a trust account?

Trust funds received by the Secretary on behalf of a tribe or individual Indians will be deposited into a trust account within twenty-four hours, or no later than the close of business on the next business day following the receipt of funds at a location with a designated federal depository.

§ 115.709 Will an annual audit be conducted on trust funds?

Yes, in accordance with the Trust Reform Act an annual audit will be conducted on trust funds. Each tribe and IIM account holder will be notified when the Secretary has conducted an annual audit on a fiscal year basis of all the trust funds held by the United States for the benefit of tribes and individual Indians. This notice will be provided in the first quarterly statement of performance following the publication of the audit.

Investments and Interests

§ 115.710 Does money in a trust account earn interest?

Yes, all money deposited in a trust account is invested and earns interest or yield returns, or both.

§ 115.711 How is money in a trust account invested?

OTFM manages trust fund investments and its investment decisions are governed by federal statute. See 25 U.S.C. §§ 161(a) and 162a.

§ 115.712 What is the interest rate earned on money in a trust account?

The rate of interest on a trust account changes based on how the money is invested and how those investments perform.

§ 115.713 When does money in a trust account start earning interest?

Funds must remain on deposit at least one business day before interest is earned. Interest earnings of less than one cent are not credited to any account.

Subpart G—Tribal Accounts

§ 115.800 When does OTFM open a tribal account?

A tribal account is opened when OTFM receives income from the sources described in § 115.702.

§ 115.801 How often will a tribe receive information about its trust account(s)?

The OTFM is required to provide each tribe with a statement of performance quarterly, within or no later than 20 business days after the close of every quarterly statement period.

§ 115.802 May a tribe make a request to OTFM to receive information about its trust account more frequently?

Yes, a tribe may contact OTFM at any time to:

(a) Request information about account transactions and balances;

(b) Make arrangements to access account information electronically; or

(c) Receive a monthly statement.

§ 115.803 What information will be provided in a statement of performance?

The statement of performance will identify the source, type, and status of the trust funds deposited and held in a trust account; the beginning balance; the gains and losses; receipts and disbursements; and the ending account balance of the quarterly statement period.

§ 115.804 Will we account to a tribe for those trust funds the tribe receives through direct pay?

No, under the Trust Reform Act we are only responsible for accounting for those trust funds received into, and maintained by, the Department's trust funds management system.

§ 115.805 If a tribe is paid directly under a contract for the sale or use of trust assets, will we accept those trust funds for deposit into a tribal trust account?

If a contract for the sale or use of trust assets specifies that payments are to be made directly to a tribe, we will not accept these trust funds into a tribal trust account. Where a tribe under 25 U.S.C. 450f *et seq*. has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual [the owner of the trust assets], the tribe must follow § 115.708 for the deposit of the trust funds into the trust account.

§ 115.806 How will the BIA assist in the administration of tribal judgment fund accounts?

(a) If the tribe requests assistance or if Congress directs the Secretary to provide assistance, BIA will provide technical assistance on developing a judgment use and distribution plan to a tribe.

(b) BIA will review all tribal requests for distribution of tribal judgment funds to ensure that each request complies with any requirements associated with the use of that money found in statutory language, congressional directives, court orders, court-approved settlements, settlement agreements, use and distribution plans, or bond or loan payments.

Investing and Managing Tribal Trust Funds

§ 115.807 Will OTFM consult with tribes about investments of tribal trust funds?

Upon the request of a tribe, OTFM will consult with the tribe annually to develop investment strategies to accommodate the cash flow needs of the tribe.

§ 115.808 Could trust fund investments made by OTFM lose money?

The value of trust fund investments made by OTFM will vary depending on the type of investment and, including but not limited to, the following:

(a) Current interest rates;

(b) Whether the security/investment is held to its maturity; and

(c) Original purchase price.

However, as long as the purchase price of the security/investment is made at or below face value and the security/investment is held until maturity or payoff, the security/investment will not lose principal invested funds.

§ 115.809 May a tribe recommend to OTFM how to invest the tribe's trust funds?

Tribes may recommend certain investments to OTFM, but the recommendations must be in accordance with the statutory requirements set forth in 25 U.S.C. §§ 161a and 162a. The OTFM will make the final investment decision based on prudent investment practices.

§ 115.810 May a tribe directly invest and manage its trust funds?

A tribe may apply to withdraw its trust funds from OTFM for investment and management by the tribe. The tribe's request to withdraw funds must be in accordance with the requirements of the Trust Reform Act and 25 CFR part 1200, subpart B, unless otherwise specified by statutory language or the controlling document which governs the use of the trust funds.

§ 115.811 Under what conditions may a tribe redeposit funds with OTFM that were previously withdrawn under the Trust Reform Act?

Tribal trust funds withdrawn under the Trust Reform Act may be returned to OTFM under the following conditions:

(a) A tribe must make a written request to OTFM to redeposit all or part of the withdrawn trust funds;

(b) No tribal trust funds may be redeposited to a tribal trust account during the first six months after being withdrawn, except with the approval of the Secretary;

(c) Tribal trust funds may only be returned to OTFM a maximum of twice a year, except with the approval of the Secretary; and

(d) A tribe must return withdrawn trust funds in accordance with the requirements of the Trust Reform Act in 25 CFR, part 1200, subpart C.

§ 115.812 Is a tribe responsible for its expenditures of trust funds that are not made in compliance with statutory language or other federal law?

If a tribe's use of trust funds is limited by statutory language or other federal law(s) and a tribe uses those trust funds in direct violation of those laws, absent an approved modification which allows for the expenditures, we will require the tribe to reimburse its trust fund account.

§ 115.813 Is there a limit to the amount of trust funds OTFM will disburse from a tribal trust account?

OTFM will only disburse the available balance of the trust funds in a tribal trust account in accordance with a use and distribution plan, if applicable, and will not overdraw a tribal trust account. If a tribe's trust funds are invested in securities that have not matured, OTFM will only sell the asset to make cash available to the tribe if:

(a) There are no restrictions against the sale, and

(b) A tribe provides OTFM with a tribal resolution stating that:

(1) The security must be sold;

(2) The tribe acknowledges that they may incur a penalty when the security is sold; and

(3) The tribe acknowledges that the security may lose value if it is sold prior to maturity.

§ 115.814 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for its intended purpose?

A tribe may redeposit funds not used for a particular purpose or project if:

(a) The funds were withdrawn in accordance with:

(1) The terms of Trust Reform Act;

(2) The terms of the legislative settlement; or

(3) The terms of a judgment use and distribution plan; and

(b) The tribe can provide documentation showing the source of the funds to be redeposited.

Withdrawing Tribal Trust Funds

§ 115.815 How does a tribe request trust funds from a tribal trust account?

To request trust funds from a tribal trust account, a tribe may:

(a) Make a written request to the BIA or the OTFM that is signed by the proper authorizing official(s), list the amount of trust funds to be withdrawn, provide any additional documentation or information required by law to withdraw certain trust funds, and must include a tribal resolution approving the withdrawal of the specified amount of trust funds; or

(b) Contact the OTFM to withdraw funds in accordance with the Trust Reform Act and 25 CFR part 1200.

§ 115.816 May a tribe's request for a withdrawal of trust funds from its trust account be delayed or denied?

(a) Action on a tribe's request for a withdrawal of trust funds may be delayed or denied if:

(1) The tribe did not submit all the necessary documentation;

(2) The tribe's request is not signed by the proper authorizing official(s);

(3) OTFM does not have documentation from the tribe certifying its recognized, authorizing officials;

(4) The tribe's request is in conflict with statutory language or the controlling document governing the use of the trust funds; or

(5) The BIA or OTFM requires clarification regarding the tribe's request.

(b) If action on a tribe's request to withdraw trust funds will be delayed or denied, the BIA or the OTFM will:

(1) Notify the tribe within ten (10) working days of the date of a request made under § 115.815(a);

(2) Notify the tribe under the time frames established in 25 CFR part 1200 for requests made under the Trust Reform Act; and

(3) Provide technical assistance to the tribe to address any problems.

§ 115.817 How does OTFM disburse money to a tribe?

Upon receipt of all necessary documentation, OTFM will process the request for disbursement and send the tribe the requested amount of trust funds within one business day. Whenever possible, trust funds will be disbursed electronically to an account in a financial institution designated by the tribe. If there are circumstances that preclude electronic payments, OTFM will mail a check.

Unclaimed Per Capita Funds

§ 115.818 What happens if an Indian adult does not cash his or her per capita check?

(a) If an Indian adult does not cash his or her per capita check within twelve (12) months of the date the check was issued, the check will be canceled and the trust funds will be deposited into a ''returned per capita account'' where the funds will be maintained until we receive a request for disbursement by the Indian adult or for disposition by a tribe pursuant to § 115.820.

(b) If an Indian adult's per capita check is returned to us as undeliverable, the trust funds will be immediately deposited into a ''returned per capita account'' where the funds will be maintained until we receive a request for disbursement by the individual or for disposition by a tribe pursuant to § 115.820.

§ 115.819 What steps will be taken to locate an individual whose per capita check is returned as undeliverable or not cashed within twelve (12) months of issuance?

The OTFM will notify a tribe of the names of the individuals whose per capita checks were returned as undeliverable or not cashed within twelve (12) months of issuance and will take reasonable action, including utilizing electronic search tools, to locate the individual entitled to receive the per capita funds.

§ 115.820 May OTFM transfer money in a returned per capita account to a tribal account?

Funds in a returned per capita account will not automatically be returned to a tribe. However, a tribe may apply under 25 U.S.C. 164 and Public Law 87–283, 75 Stat. 584 (1961), to have the unclaimed per capita funds transferred to its account for the tribe's use after six years have passed from the date of distribution.

Subpart H—Special Deposit Accounts

§ 115.900 Who receives the interest earned on trust funds in a special deposit account?

Generally, any interest earned on trust funds in a special deposit account will follow the principal (i.e., the tribe or individual who owns the trust funds in the special deposit account will receive the interest earned).

§ 115.901 When will the trust funds in a special deposit account be credited or paid out to the owner of the funds?

OTFM will disburse the trust funds from a special deposit account and deposit the trust funds in the owner's trust account following the BIA certification of the ownership of the funds and OTFM's receipt of such certification.

§ 115.902 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?

No, administrative or land conveyance fees paid as federal reimbursements may not be deposited with OTFM, which includes special deposit accounts. These fees must be deposited in the Federal Financial System.

§ 115.903 May cash bonds (e.g., performance bonds, appeal bonds, etc.) be deposited into a special deposit account?

No, cash bonds may not be deposited with OTFM, which includes the special deposit accounts at OTFM. Cash bonds held by the Secretary are to be deposited in non-interest bearing accounts until the term of the bonds expire.

§ 115.904 Where earnest money is paid prior to Secretarial approval of a conveyance or contract instrument involving trust assets, may the BIA deposit that earnest money into a special deposit account?

No, any money received prior to Secretarial approval of conveyance or contract instrument involving trust assets must be deposited into a non-interest bearing, non-trust account. After the Secretary approves the conveyance or contract instrument involving trust assets, the money designated by the conveyance or contract instrument will be deposited into a trust fund account.

Subpart I—Records

§ 115.1000 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program pursuant to 25 U.S.C. 450f *et seq.*; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§ 115.1001 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 115.1000(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 115.1000(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, the tribe or tribal organization may be prevented from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

PART 162—LEASES AND PERMITS

4. Part 162 is revised to read as follows:

Subpart A—General Provisions

Sec.

162.100 What are the purposes of this part?
162.101 What key terms do I need to know?

162.102 What land, or interests in land, are subject to these regulations?
162.103 What types of land use agreements are covered by these regulations?
162.104 When is a lease needed to authorize possession of Indian Land?
162.105 Can tracts with different Indian landowners be unitized for leasing purposes?
162.106 What will BIA do if possession is taken without an approved lease or other proper authorization?
162.107 What are BIA's objectives in granting or approving leases?
162.108 What are BIA's responsibilities in administering and enforcing leases?
162.109 What laws, other than these regulations, will apply to leases granted or approved under this part?
162.110 Can these regulations be administered by tribes, on the Secretary's or on BIA's behalf?
162.111 Who owns the records associated with this part?
162.112 How must records associated with this part be preserved?
162.113 May decisions under this part be appealed?

Subpart B—Agricultural Leases

General Provisions

162.200 What types of leases are covered by this subpart?
162.201 Must agricultural land be managed in accordance with a tribe's agricultural resource management plan?
162.202 How will tribal laws be enforced on agricultural land?
162.203 When can the regulations in this subpart be superseded or modified by tribal laws and leasing policies?
162.204 Must notice of applicable tribal laws and leasing policies be provided?
162.205 Can individual Indian landowners exempt their agricultural land from certain tribal leasing policies?

How To Obtain a Lease

162.206 Can the terms of an agricultural lease be negotiated with the Indian landowners?
162.207 When can the Indian landowners grant an agricultural lease?
162.208 Who can represent the Indian landowners in negotiating or granting an agricultural lease?
162.209 When can BIA grant an agricultural lease on behalf of an Indian landowner?
162.210 When can BIA grant a permit covering agricultural land?
162.211 What type of valuation or evaluation methods will be applied in estimating the fair annual rental of Indian land?
162.212 When will the BIA advertise Indian land for agricultural leases?
162.213 What supporting documents must be provided prior to BIA's grant or approval of an agricultural lease?
162.214 How and when will BIA decide whether to approve an agricultural lease?
162.215 When will an agricultural lease be effective?
162.216 When will a BIA decision to approve an agricultural lease be effective?
162.217 Must an agricultural lease or permit be recorded?

Lease Requirements

162.218 Is there a standard agricultural lease form?
162.219 Are there any provisions that must be included in an agricultural lease?
162.220 Are there any formal requirements that must be satisfied in the execution of an agricultural lease?
162.221 How should the land be described in an agricultural lease?
162.222 How much rent must be paid under an agricultural lease?
162.223 Must the rent be adjusted under an agricultural lease?
162.224 When are rent payments due under an agricultural lease?
162.225 Will untimely rent payments made under an agricultural lease be subject to interest charges or late payment penalties?
162.226 To whom can rent payments be made under an agricultural lease?
162.227 What form of rent payment can be accepted under an agricultural lease?
162.228 What other types of payments are required under an agricultural lease?
162.229 How long can the term of an agricultural lease run?
162.230 Can an agricultural lease be amended, assigned, sublet, or mortgaged?
162.231 How can the land be used under an agricultural lease?
162.232 Can improvements be made under an agricultural lease?
162.233 Who will own the improvements made under an agricultural lease?
162.234 Must a tenant provide a bond under an agricultural lease?
162.235 What form of bond can be accepted under an agricultural lease?
162.236 How will a cash bond be administered?
162.237 What insurance is required under an agricultural lease?
162.238 What indemnities are required under an agricultural lease?
162.239 How will payment rights and obligations relating to agricultural land be allocated between the Indian landowners and the tenant?
162.240 Can an agricultural lease provide for negotiated remedies in the event of a violation?

Lease Administration

162.241 Will administrative fees be charged for actions relating to agricultural leases?
162.242 How will BIA decide whether to approve an amendment to an agricultural lease?
162.243 How will BIA decide whether to approve an assignment or sublease under an agricultural lease?
162.244 How will BIA decide whether to approve a leasehold mortgage under an agricultural lease?
162.245 When will a BIA decision to approve an amendment, assignment, sublease, or mortgage under an agricultural lease be effective?
162.246 Must an amendment, assignment, sublease, or mortgage approved under an agricultural lease be recorded?

Lease Enforcement

162.247 Will BIA notify a tenant when a rent payment is due under an agricultural lease?
162.248 What will BIA do if rent payments are not made in the time and manner required by an agricultural lease?
162.249 Will any special fees be assessed on delinquent rent payments due under an agricultural lease?
162.250 How will BIA determine whether the activities of a tenant under an agricultural lease are in compliance with the terms of the lease?
162.251 What will BIA do in the event of a violation under an agricultural lease?
162.252 What will BIA do if a violation of an agricultural lease is not cured within the requisite time period?
162.253 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving agricultural leases?
162.254 When will a cancellation of an agricultural lease be effective?
162.255 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?
162.256 What will BIA do if a tenant holds over after the expiration or cancellation of an agricultural lease?

Subpart C—Residential Leases

[Reserved]

Subpart D—Business Leases

[Reserved]

Subpart E—Special Requirements for Certain Reservations 162.500 Crow Reservation.

162.500 Crow Reservation.
162.501 Fort Belknap Reservation.
162.502 Cabazon, Augustine, and Torres-Martinez Reservations, California.
162.503 San Xavier and Salt River Pima-Maricopa Reservations.

Subpart F—Non-Agricultural Leases

162.600 What types of leases are covered by this subpart?
162.601 Grants of leases by Secretary.
162.602 Grants of leases by owners or their representatives.
162.603 Use of land of minors.
162.604 Special requirements and provisions.
162.605 Negotiation of leases.
162.606 Advertisement.
162.607 Duration of leases.
162.608 Ownership of improvements.
162.609 Unitization for leasing.
162.610 Subleases and assignments.
162.611 Payment of fees and drainage and irrigation charges.
162.612 Can a lease provide for negotiated remedies in the event of a violation?
162.613 Will BIA notify a tenant when a rent payment is due under a lease?
162.614 Will untimely rent payments made under a lease be subject to interest charges or late payment penalties?
162.615 What will BIA do if rent payments are not made in the time and manner required by a lease?
162.616 Will any special fees be assessed on delinquent rent payments due under a lease?

162.617 How will BIA determine whether the activities of a tenant under a lease are in compliance with the terms of the lease?
162.618 What will BIA do in the event of a violation under a lease?
162.619 What will BIA do if a violation of a lease is not cured within the requisite time period?
162.620 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving leases?
162.621 When will a cancellation of a lease be effective?
162.622 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?
162.623 What will BIA do if a tenant holds over after the expiration or cancellation of a lease?

Authority: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48 Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968, 107 Stat. 2011, 108 Stat. 4572, March 20, 1996, 110 Stat. 4016; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 409a, 413, 415, 415a, 415b, 415c, 415d, 477, 635, 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733; 44 U.S.C. 3101 *et seq.*

Subpart A—General Provisions

§ 162.100 What are the purposes of this part?

(a) The purposes of this part are to:

(1) Identify the conditions and authorities under which certain interests in Indian land and Government land may be leased;

(2) Describe the manner in which various types of leases may be obtained;

(3) Identify terms and conditions that may be required in various types of leases;

(4) Describe the policies and procedures that will be applied in the administration and enforcement of various types of leases; and

(5) Identify special requirements that apply to leases made under special acts of Congress that apply only to certain Indian reservations.

(b) This part includes six subparts, including separate, self-contained subparts relating to Agricultural Leases (Subpart B), Residential Leases (Subpart C, reserved), Business Leases (Subpart D, reserved), and Non-Agricultural Leases (Subpart F), respectively. Subpart E identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. Leases covered by subpart E are also subject to the general provisions in subparts A through F, respectively, except to the extent those general provisions are inconsistent with any of the special provisions in subpart E or any special act of Congress under which those leases are made.

(c) These regulations apply to all leases in effect when the regulations are promulgated; however, unless otherwise agreed by the parties, these regulations will not affect the validity or terms of any existing lease.

§ 162.101 What key terms do I need to know?

For purposes of this part:

Adult means an individual who is 18 years of age or older.

Agricultural land means Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.

Agricultural lease means a lease of agricultural land for farming and/or grazing purposes.

AIARMA means the American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), as amended on November 2, 1994 (108 Stat. 4572).

Assignment means an agreement between a tenant and an assignee, whereby the assignee acquires all of the tenant's rights, and assumes all of the tenant's obligations, under a lease.

BIA means the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of BIA under § 162.109 of this part.

Bond means security for the performance of certain lease obligations, as furnished by the tenant, or a guaranty of such performance as furnished by a third-party surety.

Day means a calendar day.

Emancipated minor means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

Fair annual rental means the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market.

Fee interest means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

Fractionated tract means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

Government land means any tract, or interest therein, in which the surface estate is owned by the United States and administered by BIA, not including tribal land that has been reserved for administrative purposes.

Immediate family means a spouse, brother, sister, lineal ancestor, lineal descendant, or member of the household of an individual Indian landowner.

Indian land means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

Indian landowner means a tribe or individual Indian who owns an interest in Indian land in trust or restricted status.

Individually-owned land means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

Interest, when used with respect to Indian land, means an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

Lease means a written agreement between Indian landowners and a tenant or lessee, whereby the tenant or lessee is granted a right to possession of Indian land, for a specified purpose and duration. Unless otherwise provided, the use of this term will also include permits, as appropriate.

Lessee means tenant, as defined in this section.

Life estate means an interest in Indian land that is limited, in duration, to the life of the life tenant holding the interest, or the life of some other person.

Majority interest means more than 50% of the trust or restricted interests in a tract of Indian land.

Minor means an individual who is less than 18 years of age.

Mortgage means a mortgage, deed of trust or other instrument that pledges a tenant's leasehold interest as security for a debt or other obligation owed by the tenant to a lender or other mortgagee.

NEPA means the National Environmental Policy Act (42 U.S.C. § 4321, *et seq.*)

Non compos mentis means a person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

Permit means a written agreement between Indian landowners and the applicant for the permit, also referred to as a permittee, whereby the permittee is granted a revocable privilege to use Indian land or Government land, for a specified purpose.

Remainder means an interest in Indian land that is created at the same time as a life estate, for the use and enjoyment of its owner after the life estate terminates.

Restricted land or restricted status means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

Secretary means the Secretary of the Interior or an authorized representative.

Sublease means a written agreement by which the tenant grants to an individual or entity a right to possession no greater than that held by the tenant under the lease.

Surety means one who guarantees the performance of another.

Tenant means a person or entity who has acquired a legal right of possession to Indian land by a lease or permit under this part.

Trespass means an unauthorized possession, occupancy or use of Indian land.

Tribal land means the surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. § 476).

Tribal laws means the body of law that governs land and activities under the jurisdiction of a tribe, including ordinances and other enactments by the tribe, tribal court rulings, and tribal common law.

Trust land means any tract, or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

Undivided interest means a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

Us/We/Our means the Secretary or BIA and any tribe acting on behalf of the Secretary or BIA under § 162.110 of this part.

USPAP means the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

§ 162.102 What land, or interests in land, are subject to these regulations?

(a) These regulations apply to Indian land and Government land, including any tract in which an interest is owned by an individual Indian or tribe in trust or restricted status.

(b) Where a life estate and remainder interest are both owned in trust or restricted status, the life estate and remainder interest must both be leased under these regulations, unless the lease is for less than one year in duration. Unless otherwise provided by the document creating the life estate or by agreement, rent payable under the lease must be paid to the life tenant under part 179 of this chapter.

(c) In approving a lease under these regulations, we will not lease any fee interest in Indian land, nor will we collect rent on behalf of any fee owners. The leasing of the trust and restricted interests of the Indian landowners will not be conditioned on a lease having been obtained from the owners of any fee interests. Where all of the trust or restricted interests in a tract are subject to a life estate held in fee status, we will approve a lease of the remainder interests only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners.

(d) These regulations do not apply to tribal land that is leased under a corporate charter issued by us pursuant to 25 U.S.C. § 477, or under a special act of Congress authorizing leases without our approval under certain conditions, except to the extent that the authorizing statutes require us to enforce such leases on behalf of the Indian landowners.

(e) To the extent any regulations in this part conflict with the Indian Land Consolidation Act Amendments of 2000, Public Law 106–462, the provisions of that Act will govern.

§ 162.103 What types of land use agreements are covered by these regulations?

(a) These regulations cover leases that authorize the possession of Indian land. These regulations do not apply to:

(1) Mineral leases, prospecting permits, or mineral development agreements, as covered by parts 211, 212 and 225 of this chapter and similar parts specific parts specific to particular tribes;

(2) Grazing permits, as covered by part 166 of this chapter and similar parts specific parts specific to particular tribes;

(3) Timber contracts, as covered by part 163 of this chapter;

(4) Management contracts, joint venture agreements, or other encumbrances of tribal land, as covered by 25 U.S.C. § 81, as amended;

(5) Leases of water rights associated with Indian land, except to the extent the use of such water rights is incorporated in a lease of the land itself; and

(6) Easements or rights-of-way, as covered by part 169 of this chapter.

(b) Where appropriate, the regulations in this part that specifically refer to leases will apply to permits that authorize the temporary, non-possessory use of Indian land or Government land, not including:

(1) Land assignments and similar instruments authorizing temporary uses by tribal members, in accordance with tribal laws or custom; and

(2) Trader's licenses issued under part 140 of this chapter.

§ 162.104 When is a lease needed to authorize possession of Indian Land?

(a) An Indian landowner who owns 100% of the trust or restricted interests in a tract may take possession without a lease or any other prior authorization from us.

(b) An Indian landowner of a fractional interest in a tract must obtain a lease of the other trust and restricted interests in the tract, under these regulations, unless the Indian co-owners have given the landowner's permission to take or continue in possession without a lease.

(c) A parent or guardian of a minor child who owns 100% of the trust interests in the land may take possession without a lease. We may require that the parent or guardian provide evidence of a direct benefit to the minor child. When the child reaches the age of majority, a lease must be obtained under these regulations to authorize continued possession.

(d) Any other person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a lease under these regulations before taking possession.

§ 162.105 Can tracts with different Indian landowners be unitized for leasing purposes?

(a) A lease negotiated by Indian landowners may cover more than one tract of Indian land, but the minimum consent requirements for leases granted by Indian landowners under subparts B through D of this part will apply to each tract separately. We may combine multiple tracts into a unit for leases negotiated or advertised by us, if we determine that unitization is in the Indian landowners' best interests and

consistent with the efficient administration of the land.

(b) Unless otherwise provided in the lease, the rent or other consideration derived from a unitized lease will be distributed based on the size of each landowner's interest in proportion to the acreage within the entire unit.

§ 162.106 What will BIA do if possession is taken without an approved lease or other proper authorization?

(a) If a lease is required, and possession is taken without a lease by a party other than an Indian landowner of the tract, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the party in possession is engaged in negotiations with the Indian landowners to obtain a lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.

(b) Where a trespass involves Indian agricultural land, we will also assess civil penalties and costs under part 166, subpart I, of this chapter.

§ 162.107 What are BIA's objectives in granting or approving leases?

(a) We will assist Indian landowners in leasing their land, either through negotiations or advertisement. In reviewing a negotiated lease for approval, we will defer to the landowners' determination that the lease is in their best interest, to the maximum extent possible. In granting a lease on the landowners' behalf, we will obtain a fair annual rental and attempt to ensure (through proper notice) that the use of the land is consistent with the landowners' wishes. We will also recognize the rights of Indian landowners to use their own land, so long as their Indian co-owners are in agreement and the value of the land is preserved.

(b) We will recognize the governing authority of the tribe having jurisdiction over the land to be leased, preparing and advertising leases in accordance with applicable tribal laws and policies. We will promote tribal control and self-determination over tribal land and other land under the tribe's jurisdiction, through contracts and self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. § 450f *et seq.*

§ 162.108 What are BIA's responsibilities in administering and enforcing leases?

(a) We will ensure that tenants meet their payment obligations to Indian landowners, through the collection of rent on behalf of the landowners and the prompt initiation of appropriate collection and enforcement actions. We will also assist landowners in the enforcement of payment obligations that run directly to them, and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to us under these or other regulations.

(b) We will ensure that tenants comply with the operating requirements in their leases, through appropriate inspections and enforcement actions as needed to protect the interests of the Indian landowners and respond to concerns expressed by them. We will take immediate action to recover possession from trespassers operating without a lease, and take other emergency action as needed to preserve the value of the land.

§ 162.109 What laws, other than these regulations, will apply to leases granted or approved under this part?

(a) Leases granted or approved under this part will be subject to federal laws of general applicability and any specific federal statutory requirements that are not incorporated in these regulations.

(b) Tribal laws generally apply to land under the jurisdiction of the tribe enacting such laws, except to the extent that those tribal laws are inconsistent with these regulations or other applicable federal law. These regulations may be superseded or modified by tribal laws, however, so long as:

(1) The tribal laws are consistent with the enacting tribe's governing documents;

(2) The tribe has notified us of the superseding or modifying effect of the tribal laws;

(3) The superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with our general trust responsibility under federal law; and

(4) The superseding or modifying of the regulation applies only to tribal land.

(c) State law may apply to lease disputes or define the remedies available to the Indian landowners in the event of a lease violation by the tenant, if the lease so provides and the Indian landowners have expressly agreed to the application of state law.

§ 162.110 Can these regulations be administered by tribes, on the Secretary's or on BIA's behalf?

Except insofar as these regulations provide for the granting, approval, or enforcement of leases and permits, the provisions in these regulations that authorize or require us to take certain actions will extend to any tribe or tribal organization that is administering specific programs or providing specific services under a contract or self-governance compact entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450f *et seq.*).

§ 162.111 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under 25 U.S.C. § 450f *et seq.*, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§ 162.112 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 162.111(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 162.111(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

§ 162.113 May decisions under this part be appealed?

Yes. Except where otherwise provided in this part, appeals from decisions by the BIA under this part may be taken pursuant to 25 CFR part 2.

Subpart B—Agricultural Leases

General Provisions

§ 162.200 What types of leases are covered by this subpart?

The regulations in this subpart apply to agricultural leases, as defined in this part. The regulations in this subpart may also apply to business leases on agricultural land, where appropriate.

§ 162.201 Must agricultural land be managed in accordance with a tribe's agricultural resource management plan?

(a) Agricultural land under the jurisdiction of a tribe must be managed in accordance with the goals and objectives in any agricultural resource management plan developed by the tribe, or by us in close consultation with the tribe, under AIARMA.

(b) A ten-year agricultural resource management and monitoring plan must be developed through public meetings and completed within three years of the initiation of the planning activity. Such a plan must be developed through public meetings, and be based on the public meeting records and existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

(2) Identify specific tribal agricultural resource goals and objectives;

(3) Establish management objectives for the resources;

(4) Define critical values of the Indian tribe and its members and identify holistic management objectives; and

(5) Identify actions to be taken to reach established objectives.

(c) Where the regulations in this subpart are inconsistent with a tribe's agricultural resource management plan, we may waive the regulations under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

§ 162.202 How will tribal laws be enforced on agricultural land?

(a) Unless prohibited by federal law, we will recognize and comply with tribal laws regulating activities on agricultural land, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) While the tribe is primarily responsible for enforcing tribal laws pertaining to agricultural land, we will:

(1) Assist in the enforcement of tribal laws;

(2) Provide notice of tribal laws to persons or entities undertaking activities on agricultural land, under § 162.204(c) of this subpart; and

(3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as such an appearance would not:

(i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR Part 2, Subpart E;

(ii) Constitute a waiver of the sovereign immunity of the United States; or

(iii) Authorize or result in a review of our actions by a tribal court.

(c) Where the regulations in this subpart are inconsistent with a tribal law, but such regulations cannot be superseded or modified by the tribal law under § 162.109 of this part, we may waive the regulations under part 1 of this chapter, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

§ 162.203 When can the regulations in this subpart be superseded or modified by tribal laws and leasing policies?

(a) The regulations in this subpart may be superseded or modified by tribal laws, under the circumstances described in § 162.109(b) of this part.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for the leasing of tribal and individually-owned agricultural land, we will:

(1) Waive the general prohibition against tenant preferences in leases advertised for bid under § 162.212 of this subpart, by allowing prospective Indian tenants to match the highest responsible bid (unless the tribal leasing policy specifies some other manner in which the preference must be afforded);

(2) Waive the requirement that a tenant post a bond under § 162.234 of this subpart;

(3) Modify the requirement that a tenant post a bond in a form described in § 162.235 of this subpart;

(4) Approve leases of tribal land at rates established by the tribe, as provided in § 162.222(b) of this subpart.

(c) When specifically authorized by an appropriate tribal resolution establishing a general policy for the leasing of ''highly fractionated undivided heirship lands'' (as defined in the tribal leasing policy), we may waive or modify the three-month notice requirement in § 162.209(b) of this subpart, so long as:

(1) The tribal law or leasing policy adopts an alternative plan for providing notice to Indian landowners, before an agricultural lease is granted by us on their behalf; and

(2) A waiver or modification of the three-month notice requirement is needed to prevent waste, reduce idle land acreage, and ensure lease income to the Indian landowners.

(d) Tribal leasing policies of the type described in paragraphs (b) through (c) of this section will not apply to individually-owned land that has been made exempt from such laws or policies under § 162.205 of this subpart.

§ 162.204 Must notice of applicable tribal laws and leasing policies be provided?

(a) A tribe must provide us with an official copy of any tribal law or leasing policy that supersedes or modifies these regulations under §§ 162.109 or 162.203 of this part. If the tribe has not already done so, we will provide notice of such a tribal law or leasing policy to affected Indian landowners and persons or entities undertaking activities on agricultural land. Such notice will be provided in the manner described in paragraphs (b) through (c) of this section.

(b) We will provide notice to Indian landowners, as to the superseding or modifying effect of any tribal leasing policy and their right to exempt their land from such a policy. Such notice will be provided by:

(1) Written notice included in a notice of our intent to lease the land, issued under § 162.209(b) of this subpart; or

(2) Public notice posted at the tribal community building or the United States Post Office, or published in the local newspaper that serves the area in which the Indian owners' land is located, at the time the tribal leasing policy is adopted.

(c) We will provide notice to persons or entities undertaking activities on agricultural land, as to the general applicability of tribal laws and the superseding or modifying effect of particular tribal laws and leasing policies. Such notice will be provided by:

(1) Written notice included in advertisements for lease, issued under § 162.212 of this subpart; or

(2) Public notice posted at the tribal community building or the United States Post Office, or published in a local newspaper of general circulation, at the time the tribal law is enacted or the leasing policy adopted.

§ 162.205 Can individual Indian landowners exempt their agricultural land from certain tribal leasing policies?

(a) Individual Indian landowners may exempt their agricultural land from the application of a tribal leasing policy of a type described in § 162.203(b) through (c) of this subpart, if the Indian owners

of at least 50% of the trust or restricted interests in the land submit a written objection to us before a lease is granted or approved.

(b) Upon our receipt of a written objection from the Indian landowners that satisfies the requirements of paragraph (a) of this section, we will notify the tribe that the owners' land has been exempted from a specific tribal leasing policy. If the exempted land is part of a unitized lease tract, such land will be removed from the unit and leased separately, if appropriate.

(c) The procedures described in paragraphs (a) and (b) of this section will also apply to withdrawing an approved exemption.

How to Obtain a Lease

§ 162.206 Can the terms of an agricultural lease be negotiated with the Indian landowners?

An agricultural lease may be obtained through negotiation. We will assist prospective tenants in contacting the Indian landowners or their representatives for the purpose of negotiating a lease, and we will assist the landowners in those negotiations upon request.

§ 162.207 When can the Indian landowners grant an agricultural lease?

(a) Tribes grant leases of tribally-owned agricultural land, including any tribally-owned undivided interest(s) in a fractionated tract, subject to our approval. Where tribal land is subject to a land assignment made to a tribal member or some other individual under tribal law or custom, the individual and the tribe must both grant the lease, subject to our approval.

(b) Adult Indian owners, or emancipated minors, may grant agricultural leases of their land, including undivided interests in fractionated tracts, subject to our approval.

(c) An agricultural lease of a fractionated tract may be granted by the owners of a majority interest in the tract, subject to our approval. Although prior notice to non-consenting individual Indian landowners is generally not needed prior to our approval of such a lease, a right of first refusal must be offered to any non-consenting Indian landowner who is using the entire lease tract at the time the lease is entered into by the owners of a majority interest. Where the owners of a majority interest grant such a lease on behalf of all of the Indian owners of a fractionated tract, the non-consenting Indian landowners must receive a fair annual rental.

(d) As part of the negotiation of a lease, Indian landowners may advertise their land to identify potential tenants with whom to negotiate.

§ 162.208 Who can represent the Indian landowners in negotiating or granting an agricultural lease?

The following individuals or entities may represent an individual Indian landowner:

(a) An adult with custody acting on behalf of his or her minor children;

(b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(c) An adult or legal entity who has been given a written power of attorney that:

(1) Meets all of the formal requirements of any applicable tribal or state law;

(2) Identifies the attorney-in-fact and the land to be leased; and

(3) Describes the scope of the power granted and any limits thereon.

§ 162.209 When can BIA grant an agricultural lease on behalf of an Indian landowner?

(a) We may grant an agricultural lease on behalf of:

(1) Individuals who are found to be non compos mentis by a court of competent jurisdiction;

(2) Orphaned minors;

(3) The undetermined heirs and devisees of deceased Indian owners;

(4) Individuals who have given us a written power of attorney to lease their land; and

(5) Individuals whose whereabouts are unknown to us, after reasonable attempts are made to locate such individuals; and

(6) The individual Indian landowners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

(b) We may grant an agricultural lease on behalf of all of the individual Indian owners of a fractionated tract, where:

(1) We have provided the Indian landowners with written notice of our intent to grant a lease on their behalf, but the Indian landowners are unable to agree upon a lease during a three-month negotiation period immediately following such notice, or any other notice period established by a tribe under § 162.203(c) of this subpart; and

(2) The land is not being used by an Indian landowner under § 162.104(b) of this part.

§ 162.210 When can BIA grant a permit covering agricultural land?

(a) We may grant a permit covering agricultural land in the same manner as we would grant an agricultural lease under § 162.209 of this part. We may also grant a permit on behalf of individual Indian landowners, without prior notice, if it is impractical to provide notice to the owners and no substantial injury to the land will occur.

(b) We may grant a permit covering agricultural land, but not an agricultural lease, on government land.

(c) We will not grant a permit on tribal agricultural land, but a tribe may grant a permit, subject to our approval, in the same manner as it would grant a lease under § 162.207(a) of this subpart.

§ 162.211 What type of valuation or evaluation methods will be applied in estimating the fair annual rental of Indian land?

(a) To support the Indian landowners in their negotiations, and to assist in our consideration of whether an agricultural lease is in the Indian landowners' best interest, we must determine the fair annual rental of the land prior to our grant or approval of the lease, unless the land may be leased at less than a fair annual rental under § 162.222(b) through (c) of this subpart.

(b) A fair annual rental may be determined by competitive bidding, appraisal, or any other appropriate valuation method. Where an appraisal or other valuation is needed to determine the fair annual rental, the appraisal or valuation must be prepared in accordance with USPAP.

§ 162.212 When will the BIA advertise Indian land for agricultural leases?

(a) We will generally advertise Indian land for agricultural leasing:

(1) At the request of the Indian landowners; or

(2) Before we grant a lease under § 162.209(b) of this subpart.

(b) Advertisements will provide prospective tenants with notice of any superseding tribal laws and leasing policies that have been made applicable to the land under §§ 162.109 and 162.203 of this part, along with certain standard terms and conditions to be included in the lease. Advertisements will prohibit tenant preferences, and bidders at lease sales will not be afforded any preference, unless a preference in favor of individual Indians is required by a superseding tribal law or leasing policy.

(c) Advertisements will require sealed bids, and they may also provide for further competitive bidding among the prospective tenants at the conclusion of the bid opening. Competitive bidding should be supported, at a minimum, by a market study or rent survey that is consistent with USPAP.

§ 162.213 What supporting documents must be provided prior to BIA's grant or approval of an agricultural lease?

(a) If the tenant is a corporation, partnership or other legal entity, it must provide organizational and financial documents, as needed to show that the lease will be enforceable against the tenant and the tenant will be able to perform all of its lease obligations.

(b) Where a bond is required under § 162.234 of this subpart, the bond must be furnished before we grant or approve the lease.

(c) The tenant must provide environmental and archaeological reports, surveys, and site assessments, as needed to document compliance with NEPA and other applicable federal and tribal land use requirements.

§ 162.214 How and when will BIA decide whether to approve an agricultural lease?

(a) Before we approve a lease, we must determine in writing that the lease is in the best interest of the Indian landowners. In making that determination, we will:

(1) Review the lease and supporting documents;

(2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances (including preparation of the appropriate review documents under NEPA);

(3) Assure ourselves that adequate consideration has been given, as appropriate, to:

(i) The relationship between the use of the leased premises and the use of neighboring lands;

(ii) The height, quality, and safety of any structures or other facilities to be constructed on the leased premises;

(iii) The availability of police and fire protection, utilities, and other essential community services;

(iv) The availability of judicial forums for all criminal and civil matters arising on the leased premises; and

(v) The effect on the environment of the proposed land use.

(4) Require any lease modifications or mitigation measures that are needed to satisfy any requirements of this subpart, or any other federal or tribal land use requirements.

(b) Where an agricultural lease is in a form that has previously been accepted or approved by us, and all of the documents needed to support the findings required by paragraph (a) of this section have been received, we will decide whether to approve the lease within 30 days of the date of our receipt of the lease and supporting documents. If we decide to approve or disapprove a lease, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this chapter. Copies of agricultural leases that have been approved will be provided to the tenant, and made available to the Indian landowners upon request.

§ 162.215 When will an agricultural lease be effective?

Unless otherwise provided in the lease, an agricultural lease will be effective on the date on which the lease is approved by us. An agricultural lease may be made effective on some past or future date, by agreement, but such a lease may not be approved more than one year prior to the date on which the lease term is to commence.

§ 162.216 When will a BIA decision to approve an agricultural lease be effective?

Our decision to approve an agricultural lease will be effective immediately, notwithstanding any appeal that may be filed under part 2 of this chapter.

§ 162.217 Must an agricultural lease or permit be recorded?

(a) An agricultural lease or permit must be recorded in our Land Titles and Records Office with jurisdiction over the land. We will record the lease or permit immediately following our approval under this subpart.

(b) Agricultural leases of tribal land that do not require our approval, under § 162.102 of this part, must be recorded by the tribe in our Land Titles and Records Office with jurisdiction over the land.

Lease Requirements

§ 162.218 Is there a standard agricultural lease form?

Based on the need for flexibility in advertising, negotiating and drafting of appropriate lease terms and conditions, there is no standard agricultural lease form that must be used. We will assist the Indian landowners in drafting lease provisions that conform to the requirements of this part.

§ 162.219 Are there any provisions that must be included in an agricultural lease?

In addition to the other requirements of this part, all agricultural leases must provide that:

(a) The obligations of the tenant and its sureties to the Indian landowners will also be enforceable by the United States, so long as the land remains in trust or restricted status;

(b) Nothing contained in this lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land;

(c) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises; and

(d) The tenant must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements, including tribal laws and leasing policies.

§ 162.220 Are there any formal requirements that must be satisfied in the execution of an agricultural lease?

(a) An agricultural lease must identify the Indian landowners and their respective interests in the leased premises, and the lease must be granted by or on behalf of each of the Indian landowners. One who executes a lease in a representative capacity under § 162.208 of this subpart must identify the owner being represented and the authority under which such action is being taken.

(b) An agricultural lease must be executed by individuals having the necessary capacity and authority to bind the tenant under applicable law.

(c) An agricultural lease must include a citation of the provisions in this subpart that authorize our approval, along with a citation of the formal documents by which such authority has been delegated to the official taking such action.

§ 162.221 How should the land be described in an agricultural lease?

An agricultural lease should describe the leased premises by reference to a public or private survey, if possible. If the land cannot be so described, the lease must include a legal description or other description that is sufficient to identify the leased premises, subject to our approval. Where there are undivided interests owned in fee status, the aggregate portion of trust and restricted interests should be identified in the description of the leased premises.

§ 162.222 How much rent must be paid under an agricultural lease?

(a) An agricultural lease must provide for the payment of a fair annual rental at the beginning of the lease term, unless a lesser amount is permitted under paragraphs (b) through (d) of this section. The tenant's rent payments may be:

(1) In fixed amounts; or

(2) Based on a share of the agricultural products generated by the lease, or a

percentage of the income to be derived from the sale of such agricultural products.

(b) We will approve an agricultural lease of tribal land at a nominal rent, or at less than a fair annual rental, if such a rent is negotiated or established by the tribe.

(c) We will approve an agricultural lease of individually-owned land at a nominal rent or at less than a fair annual rental, if:

(1) The tenant is a member of the Indian landowner's immediate family, or a co-owner in the lease tract; or

(2) The tenant is a cooperative or other legal entity in which the Indian landowners directly participate in the revenues or profits generated by the lease.

(d) We will grant or approve a lease at less than a fair annual rental, as previously determined by an appraisal or some other appropriate valuation method, if the land is subsequently advertised and the tenant is the highest responsible bidder.

§ 162.223 Must the rent be adjusted under an agricultural lease?

(a) Except as provided in paragraph (c) of this section, an agricultural lease must provide for one or more rental adjustments if the lease term runs more than five years, unless the lease provides for the payment of:

(1) Less than a fair annual rental, as permitted under § 162.222(b) through (c) of this part; or

(2) A rental based primarily on a share of the agricultural products generated by the lease, or a percentage of the income derived from the sale of agricultural products.

(b) If rental adjustments are required, the lease must specify:

(1) How adjustments are made;

(2) Who makes the adjustments;

(3) When the adjustments are effective; and

(4) How disputes about the adjustments are resolved.

(c) An agricultural lease of tribal land may run for a term of more than five years, without providing for a rental adjustment, if the tribe establishes such a policy under § 162.203(b)(4) and negotiates such a lease.

§ 162.224 When are rent payments due under an agricultural lease?

An agricultural lease must specify the dates on which all rent payments are due. Unless otherwise provided in the lease, rent payments may not be made or accepted more than one year in advance of the due date. Rent payments are due at the time specified in the lease, regardless of whether the tenant receives an advance billing or other notice that a payment is due.

§ 162.225 Will untimely rent payments made under an agricultural lease be subject to interest charges or late payment penalties?

An agricultural lease must specify the rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the tenant from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.251 of this subpart.

§ 162.226 To whom can rent payments be made under an agricultural lease?

(a) An agricultural lease must specify whether rent payments will be made directly to the Indian landowners or to us on behalf of the Indian landowners. If the lease provides for payment to be made directly to the Indian landowners, the lease must also require that the tenant retain specific documentation evidencing proof of payment, such as canceled checks, cash receipt vouchers, or copies of money orders or cashier's checks, consistent with the provisions of §§ 162.112 and 162.113 of this part.

(b) Rent payments made directly to the Indian landowners must be made to the parties specified in the lease, unless the tenant receives notice of a change of ownership. Unless otherwise provided in the lease, rent payments may not be made payable directly to anyone other than the Indian landowners.

(c) A lease that provides for rent payments to be made directly to the Indian landowners must also provide for such payments to be suspended and the rent thereafter paid to us, rather than directly to the Indian landowners, if:

(1) An Indian landowner dies;

(2) An Indian landowner requests that payment be made to us;

(3) An Indian landowner is found by us to be in need of assistance in managing his/her financial affairs; or

(4) We determine, in our discretion and after consultation with the Indian landowner(s), that direct payment should be discontinued.

§ 162.227 What form of rent payment can be accepted under an agricultural lease?

(a) When rent payments are made directly to the Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) Payments made to us may be delivered in person or by mail. We will not accept cash, foreign currency, or third-party checks. We will accept:

(1) Personal or business checks drawn on the account of the tenant;

(2) Money orders;

(3) Cashier's checks;

(4) Certified checks; or

(5) Electronic funds transfer payments.

§ 162.228 What other types of payments are required under an agricultural lease?

(a) The tenant may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by the tribe having jurisdiction over the land. The tenant must pay these amounts to the appropriate tribal official.

(b) Except as otherwise provided in part 171 of this chapter, if the leased premises are within an Indian irrigation project or drainage district, the tenant must pay all operation and maintenance charges that accrue during the lease term. The tenant must pay these amounts to the appropriate official in charge of the irrigation project or drainage district. Failure to make such payments will constitute a violation of the lease under § 162.251.

§ 162.229 How long can the term of an agricultural lease run?

(a) An agricultural lease must provide for a definite lease term, specifying the commencement date. The commencement date of the lease may not be more than one year after the date on which the lease is approved.

(b) The lease term must be reasonable, given the purpose of the lease and the level of investment required. Unless otherwise provided by statute, the maximum term may not exceed ten years, unless a substantial investment in the improvement of the land is required. If such a substantial investment is required, the maximum term may be up to 25 years.

(c) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.

(d) An agricultural lease may not provide the tenant with an option to renew, and such a lease may not be renewed or extended by holdover.

§ 162.230 Can an agricultural lease be amended, assigned, sublet, or mortgaged?

(a) An agricultural lease may authorize amendments, assignments, subleases, or mortgages of the leasehold interest, but only with the written consent of the parties to the lease in the

same manner the original lease was approved, and our approval. An attempt by the tenant to mortgage the leasehold interest or authorize possession by another party, without the necessary consent and approval, will be treated as a lease violation under § 162.251 of this subpart.

(b) An agricultural lease may authorize us, one or more of the Indian landowners, or a designated representative of the Indian landowners, to consent to an amendment, assignment, sublease, mortgage, or other type of agreement, on the landowners' behalf. A designated landowner or representative may not negotiate or consent to an amendment, assignment, or sublease that would:

(1) Reduce the rentals payable to the other Indian landowners; or

(2) Terminate or modify the term of the lease.

(c) Where the Indian landowners have not designated a representative for the purpose of consenting to an amendment, assignment, sublease, mortgage, or other type of agreement, such consent may be granted by or on behalf of the landowners in the same manner as a new lease, under §§ 162.207 through 162.209 of this subpart.

§ 162.231 How can the land be used under an agricultural lease?

(a) An agricultural lease must describe the authorized uses of the leased premises. Any use of the leased premises for an unauthorized purpose, or a failure by the tenant to maintain continuous operations throughout the lease term, will be treated as a lease violation under § 162.251 of this subpart.

(b) An agricultural lease must require that farming and grazing operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable tribal laws, leasing policies, or agricultural resource management plans. Appropriate stipulations or conservation plans must be developed and incorporated in all agricultural leases.

§ 162.232 Can improvements be made under an agricultural lease?

An agricultural lease must generally describe the type and location of any improvements to be constructed by the lessee. Unless otherwise provided in the lease, any specific plans for the construction of those improvements will not require the consent of the Indian owners or our approval.

§ 162.233 Who will own the improvements made under an agricultural lease?

(a) An agricultural lease may specify who will own any improvements constructed by the tenant, during the lease term. The lease must indicate whether any improvements constructed by the tenant will remain on the leased premises upon the expiration or termination of the lease, providing for the improvements to either:

(1) Remain on the leased premises, in a condition satisfactory to the Indian landowners and us; or

(2) Be removed within a time period specified in the lease, at the tenant's expense, with the leased premises to be restored as close as possible to their condition prior to construction of such improvements.

(b) If the lease allows the tenant to remove the improvements, it must also provide the Indian landowners with an option to waive the removal requirement and take possession of the improvements if they are not removed within the specified time period. If the Indian landowners choose not to exercise this option, we will take appropriate enforcement action to ensure removal at the tenant's expense.

§ 162.234 Must a tenant provide a bond under an agricultural lease?

Unless otherwise provided by a tribe under § 162.203 of this subpart, or waived by us at the request of the owners of a majority interest in an agricultural lease tract, the tenant must provide a bond to secure:

(a) The payment of one year's rental;

(b) The construction of any required improvements;

(c) The performance of any additional lease obligations, including the payment of operation and maintenance charges under § 162.228(b) of this subpart; and

(d) The restoration and reclamation of the leased premises, to their condition at the commencement of the lease term or some other specified condition.

§ 162.235 What form of bond can be accepted under an agricultural lease?

(a) Except as provided in paragraph (b) of this section, a bond must be deposited with us and made payable only to us, and such a bond may not be modified or withdrawn without our approval. We will only accept a bond in one of the following forms:

(1) Cash;

(2) Negotiable Treasury securities that:

(i) Have a market value at least equal to the bond amount; and

(ii) Are accompanied by a statement granting full authority to us to sell such securities in case of a violation of the terms of the lease.

(3) Certificates of deposit that indicate on their face that our approval is required prior to redemption by any party;

(4) Irrevocable letters of credit issued by federally-insured financial institutions authorized to do business in the United States. A letter of credit must:

(i) Contain a clause that grants us the authority to demand immediate payment if the tenant violates the lease or fails to replace the letter of credit at least 30 days prior to its expiration date;

(ii) Be payable to us;

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date of issuance; and

(iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides us with written notice that it will not be renewed, at least 90 calendar days before the letter of credit's expiration date.

(5) A surety bond issued by a company approved by the U.S. Department of the Treasury; or

(6) Any other form of highly liquid, non-volatile security that is easily convertible to cash and for which our approval is required prior to redemption by any party.

(b) A tribe may accept and hold any form of bond described in paragraph (a) of this section, to secure performance under an agricultural lease of tribal land.

§ 162.236 How will a cash bond be administered?

(a) If a cash bond is submitted, we will retain the funds in an account established in the name of the tenant.

(b) We will not pay interest on a cash performance bond.

(c) If the bond is not forfeited under § 162.252(a) of this subpart, we will refund the bond to the tenant upon the expiration or termination of the lease.

§ 162.237 What insurance is required under an agricultural lease?

When necessary to protect the interests of the Indian landowners, an agricultural lease must require that a tenant provide insurance. Such insurance may include property, crop, liability and/or casualty insurance. If insurance is required, it must identify both the Indian landowners and the United States as insured parties, and be sufficient to protect all insurable improvements on the leased premises.

§ 162.238 What indemnities are required under an agricultural lease?

(a) An agricultural lease must require that the tenant indemnify and hold the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the tenant's use or occupation of the leased premises, unless:

(1) The tenant would be prohibited by law from making such an agreement; or

(2) The interests of the Indian landowners are adequately protected by insurance.

(b) Unless the tenant would be prohibited by law from making such an agreement, an agricultural lease must specifically require that the tenant indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous materials from the leased premises that occurs during the lease term, regardless of fault.

§ 162.239 How will payment rights and obligations relating to agricultural land be allocated between the Indian landowners and the tenant?

(a) Unless otherwise provided in an agricultural lease, the Indian landowners will be entitled to receive any settlement funds or other payments arising from certain actions that diminish the value of the land or the improvements thereon. Such payments may include (but are not limited to) :

(1) Insurance proceeds;

(2) Trespass damages; and

(3) Condemnation awards.

(b) An agricultural lease may provide for the tenant to assume certain cost-share or other payment obligations that have attached to the land through past farming and grazing operations, so long as those obligations are specified in the lease and considered in any determination of fair annual rental made under this subpart.

§ 162.240 Can an agricultural lease provide for negotiated remedies in the event of a violation?

(a) A lease of tribal agricultural land may provide the tribe with certain negotiated remedies in the event of a lease violation, including the power to terminate the lease. An agricultural lease of individually-owned land may provide the individual Indian landowners with similar remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the landowners.

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 162.252(c) of this subpart. If the lease specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

(c) An agricultural lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.252 of this subpart.

Lease Administration

§ 162.241 Will administrative fees be charged for actions relating to agricultural leases?

(a) We will charge an administrative fee each time we approve an agricultural lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the tenant, assignee, or subtenant, to cover our costs in preparing or processing the documents and administering the lease.

(b) Except as provided in paragraph (c) of this section, we will charge administrative fees based on the rent payable under the lease. The fee will be 3% of the annual rent payable, including any percentage-based rent that can be reasonably estimated.

(c) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00, and any administrative fees that have been paid will be non-refundable. However, we may waive all or part of these administrative fees, in our discretion.

(d) If all or part of the expenses of the work are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

§ 162.242 How will BIA decide whether to approve an amendment to an agricultural lease?

We will approve an agricultural lease amendment if:

(a) The required consents have been obtained from the parties to the lease under § 162.230 and any sureties; and

(b) We find the amendment to be in the best interest of the Indian landowners, under the standards set forth in § 162.213 of this subpart.

§ 162.243 How will BIA decide whether to approve an assignment or sublease under an agricultural lease?

(a) We will approve an assignment or sublease under an agricultural lease if:

(1) The required consents have been obtained from the parties to the lease under § 162.230 and the tenant's sureties;

(2) The tenant is not in violation of the lease;

(3) The assignee agrees to be bound by, or the subtenant agrees to be subordinated to, the terms of the lease; and

(4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian owners.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The Indian landowners should receive any income derived by the tenant from the assignment or sublease, under the terms of the lease;

(2) The proposed use by the assignee or subtenant will require an amendment of the lease;

(3) The value of any part of the leased premises not covered by the assignment or sublease would be adversely affected; and

(4) The assignee or subtenant has bonded its performance and provided supporting documents that demonstrate that the lease or sublease will be enforceable against the assignee or subtenant, and that the assignee or subtenant will be able to perform its obligations under the lease or sublease.

§ 162.244 How will BIA decide whether to approve a leasehold mortgage under an agricultural lease?

(a) We will approve a leasehold mortgage under an agricultural lease if:

(1) The required consents have been obtained from the parties to the lease under § 162.230 and the tenant's sureties;

(2) The mortgage covers only the tenant's interest in the leased premises, and no unrelated collateral;

(3) The loan being secured by the mortgage will be used only in connection with the development or use of the leased premises, and the mortgage does not secure any unrelated debts owed by the tenant to the mortgagee; and

(4) We find no compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The tenant's ability to comply with the lease would be adversely affected by any new loan obligations;

(2) Any lease provisions would be modified by the mortgage;

(3) The remedies available to us or to the Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the event of a lease violation; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the tenant.

§ 162.245 When will a BIA decision to approve an amendment, assignment, sublease, or mortgage under an agricultural lease be effective?

Our decision to approve an amendment, assignment, sublease, or mortgage under an agricultural lease will be effective immediately, notwithstanding any appeal that may be filed under part 2 of this chapter. Copies of approved documents will be provided to the party requesting approval, and made available to the Indian landowners upon request.

§ 162.246 Must an amendment, assignment, sublease, or mortgage approved under an agricultural lease be recorded?

An amendment, assignment, sublease, or mortgage approved under an agricultural lease must be recorded in our Land Titles and Records Office that has jurisdiction over the leased premises. We will record the document immediately following our approval under this subpart.

Lease Enforcement

§ 162.247 Will BIA notify a tenant when a rent payment is due under an agricultural lease?

We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under an agricultural lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

§ 162.248 What will BIA do if rent payments are not made in the time and manner required by an agricultural lease?

(a) A tenant's failure to pay rent in the time and manner required by an agricultural lease will be a violation of the lease, and a notice of violation will be issued under § 162.251 of this subpart. If the lease requires that rent payments be made to us, we will send the tenant and its sureties a notice of violation within five business days of the date on which the rent payment was due. If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the landowners.

(b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.251(b) of this subpart, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the lease under § 162.252 of this subpart, or invoke any other remedies available under the lease or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.

(c) Partial payments may be accepted by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

(d) If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § 162.251 of this subpart. Any payment made to cure such a violation, and any future payments by the same tenant, must be made by one of the alternative payment methods listed in § 162.227(b) of this subpart.

§ 162.249 Will any special fees be assessed on delinquent rent payments due under an agricultural lease?

The following special fees will be assessed if rent is not paid in the time and manner required, in addition to any interest or late payment penalties that must be paid to the Indian landowners under an agricultural lease. The following special fees will be assessed to cover administrative costs incurred by the United States in the collection of the debt:

The tenant will pay * * *	For * * *
(a) $50.00	Administrative fee for dishonored checks.
(b) $15.00	Administrative fee for BIA processing of each notice or demand letter.
(c) 18% of balance due.	Administrative fee charged by Treasury following referral for collection of delinquent debt.

§ 162.250 How will BIA determine whether the activities of a tenant under an agricultural lease are in compliance with the terms of the lease?

(a) Unless an agricultural lease provides otherwise, we may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the tenant is in compliance with the operating requirements of the lease.

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

§ 162.251 What will BIA do in the event of a violation under an agricultural lease?

(a) If we determine that an agricultural lease has been violated, we will send the tenant and its sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within ten business days of the receipt of a notice of violation, the tenant must:

(1) Cure the violation and notify us in writing that the violation has been cured;

(2) Dispute our determination that a violation has occurred and/or explain why we should not cancel the lease; or

(3) Request additional time to cure the violation.

§ 162.252 What will BIA do if a violation of an agricultural lease is not cured within the requisite time period?

(a) If the tenant does not cure a violation of an agricultural lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

(1) The lease should be canceled by us under paragraph (c) of this section and §§ 162.253 through 162.254 of this subpart;

(2) We should invoke any other remedies available to us under the lease, including collecting on any available bond;

(3) The Indian landowners wish to invoke any remedies available to them under the lease; or

(4) The tenant should be granted additional time in which to cure the violation.

(b) If we decide to grant a tenant additional time in which to cure a violation, the tenant must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

(c) If we decide to cancel the lease, we will send the tenant and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the tenant by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) Notify the tenant of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;

(3) Notify the tenant of its right to appeal under part 2 of this chapter, as modified by § 162.253 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the tenant to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

§ 162.253 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving agricultural leases?

(a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.252 of this subpart. Instead, when we decide to cancel an agricultural lease, we may require that the tenant post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the lease cancellation decision.

§ 162.254 When will a cancellation of an agricultural lease be effective?

A cancellation decision involving an agricultural lease will not be effective until 30 days after the tenant receives a cancellation letter from us. The cancellation decision will remain ineffective if the tenant files an appeal under § 162.253 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the tenant must continue to pay rent and comply with the other terms of the lease. If an appeal is not filed in accordance with § 162.253 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the tenant receives the cancellation letter from us.

§ 162.255 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?

If a tenant or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of an agricultural lease, we will take appropriate emergency action. Emergency action may include trespass proceedings under part 166, subpart I, of this chapter, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either before or after the emergency action is taken.

§ 162.256 What will BIA do if a tenant holds over after the expiration or cancellation of an agricultural lease?

If a tenant remains in possession after the expiration or cancellation of an agricultural lease, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the tenant is engaged in negotiations with the Indian landowners to obtain a new lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under part 166, subpart I, of this chapter.

Subpart C—Residential Leases

[Reserved]

Subpart D—Business Leases

[Reserved]

Subpart E—Special Requirements for Certain Reservations

§ 162.500 Crow Reservation.

(a) Notwithstanding the regulations in other sections of this part 162, Crow Indians classified as competent under the Act of June 4, 1920 (41 Stat. 751), as amended, may lease their trust lands and the trust lands of their minor children for farming or grazing purposes without the approval of the Secretary pursuant to the Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80). However, at their election Crow Indians classified as competent may authorize the Secretary to lease, or assist in the leasing of such lands, and an appropriate notice of such action shall be made a matter of record. When this prerogative is exercised, the general regulations contained in this part 162 shall be applicable. Approval of the Secretary is required on leases signed by Crow Indians not classified as competent or made on inherited or devised trust lands owned by more than five competent devisees or heirs.

(b) The Act of May 26, 1926 (44 Stat. 658), as amended by the Act of March 15, 1948 (62 Stat. 80), provides that no lease for farming or grazing purposes shall be made for a period longer than five years, except irrigable lands under the Big Horn Canal; which may be leased for periods of ten years. No such lease shall provide the lessee a preference right to future leases which, if exercised, would thereby extend the total period of encumbrance beyond the five or ten years authorized by law.

(c) All leases entered into by Crow Indians classified as competent, under the above-cited special statutes, must be recorded at the Crow Agency. Such recording shall constitute notice to all persons. Under these special statutes, Crow Indians classified as competent are free to lease their property within certain limitations. The five-year (ten-year in the case of lands under the Big Horn Canal) limitation is intended to afford a protection to the Indians. The essence of this protection is the right to deal with the property free, clear, and unencumbered at intervals at least as frequent as those provided by law. If lessees are able to obtain new leases long before the termination of existing leases, they are in a position to set their own terms. In these circumstances lessees could perpetuate their leaseholds and the protection of the statutory limitations as to terms would be destroyed. Therefore, in implementation of the foregoing interpretation, any lease which, on its face, is in violation of statutory limitations or requirements, and any grazing lease executed more than 12 months, and any farming lease executed more than 18 months, prior to the commencement of the term thereof or any lease which purports to cancel an existing lease with the same lessee as of a future date and take effect upon such cancellation will not be recorded. Under a Crow tribal program, approved by the Department of the Interior, competent Crow Indians may, under certain circumstances, enter into agreements

which require that, for a specified term, their leases be approved. Information concerning whether a competent Crow Indian has executed such an instrument is available at the office of the Superintendent of the Crow Agency, Bureau of Indian Affairs, Crow Agency, Montana. Any lease entered into with a competent Crow Indian during the time such instrument is in effect and which is not in accordance with such instrument will be returned without recordation.

(d) Where any of the following conditions are found to exist, leases will be recorded but the lessee and lessor will be notified upon discovery of the condition:

(1) The lease in single or counterpart form has not been executed by all owners of the land described in the lease;

(2) There is, of record, a lease on the land for all or a part of the same term;

(3) The lease does not contain stipulations requiring sound land utilization plans and conservation practices; or

(4) There are other deficiencies such as, but not limited to, erroneous land descriptions, and alterations which are not clearly endorsed by the lessor.

(e) Any adult Crow Indian classified as competent shall have the full responsibility for obtaining compliance with the terms of any lease made by him pursuant to this section. This shall not preclude action by the Secretary to assure conservation and protection of these trust lands.

(f) Leases made by competent Crow Indians shall be subject to the right to issue permits and leases to prospect for, develop, and mine oil, gas, and other minerals, and to grant rights-of-way and easements, in accordance with applicable law and regulations. In the issuance or granting of such permits, leases, rights-of-way or easements due consideration will be given to the interests of lessees and to the adjustment of any damages to such interests. In the event of a dispute as to the amount of such damage, the matter will be referred to the Secretary whose determination will be final as to the amount of said damage.

§ 162.501 Fort Belknap Reservation.

Not to exceed 20,000 acres of allotted and tribal lands (non-irrigable as well as irrigable) on the Fort Belknap Reservation in Montana may be leased for the culture of sugar beets and other crops in rotation for terms not exceeding ten years.

§ 162.502 Cabazon, Augustine, and Torres-Martinez Reservations, California.

(a) Upon a determination by the Secretary that the owner or owners are not making beneficial use thereof, restricted lands on the Cabazon, Augustine, and Torres-Martinez Indian Reservations which are or may be irrigated from distribution facilities administered by the Coachella Valley County Water District in Riverside County, California, may be leased by the Secretary in accordance with the regulations in this part for the benefit of the owner or owners.

(b) All leases granted or approved on restricted lands of the Cabazon, Augustine, and Torres-Martinez Indian Reservations shall be filed for record in the office of the county recorder of the county in which the land is located, the cost thereof to be paid by the lessee. A copy of each such lease shall be filed by the lessee with the Coachella Valley County Water District or such other irrigation or water district within which the leased lands are located. All such leases shall include a provision that the lessee, in addition to the rentals provided for in the lease, shall pay all irrigation charges properly assessed against the land which became payable during the term of the lease. Act of August 25, 1950 (64 Stat. 470); Act of August 28, 1958 (72 Stat. 968).

§ 162.503 San Xavier and Salt River Pima-Maricopa Reservations.

(a) *Purpose and scope.* The Act of November 2, 1966 (80 Stat. 1112), provides statutory authority for long-term leasing on the San Xavier and Salt River Pima-Maricopa Reservations, Arizona, in addition to that contained in the Act of August 9, 1955 (69 Stat. 539), as amended (25 U.S.C. 415). When leases are made under the 1955 Act on the San Xavier or Salt River Pima-Maricopa Reservations, the regulations in part 162 apply. The purpose of this section is to provide regulations for implementation of the 1966 Act. The 1966 Act does not apply to leases made for purposes that are subject to the laws governing mining leases on Indian lands.

(b) *Duration of leases.* Leases made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes may be made for terms of not to exceed 99 years. The terms of a grazing lease shall not exceed ten years; the term of a farming lease that does not require the making of a substantial investment in the improvement of the land shall not exceed ten years; and the term of a farming lease that requires the making of a substantial investment in the improvement of the land shall not exceed 40 years. No lease shall contain an option to renew which extends the total term beyond the maximum term permitted by this section.

(c) *Required covenant and enforcement thereof.* Every lease under the 1966 Act shall contain a covenant on the part of the lessee that he will not commit or permit on the leased land any act that causes waste or a nuisance or which creates a hazard to health of persons or to property wherever such persons or property may be.

(d) *Notification regarding leasing proposals.* If the Secretary determines that a proposed lease to be made under the 1966 Act for public, religious, educational, recreational, residential, or business purposes will substantially affect the governmental interests of a municipality contiguous to the San Xavier Reservation or the Salt River Pima-Maricopa Reservation, as the case may be, he shall notify the appropriate authority of such municipality of the pendency of the proposed lease. The Secretary may, in his discretion, furnish such municipality with an outline of the major provisions of the lease which affect its governmental interests and shall consider any comments on the terms of the lease affecting the municipality or on the absence of such terms from the lease that the authorities may offer. The notice to the authorities of the municipality shall set forth a reasonable period, not to exceed 30 days, within which any such comments shall be submitted.

(e) *Applicability of other regulations.* The regulations in part 162 of this title shall apply to leases made under the 1966 Act except where such regulations are inconsistent with this section.

(f) *Mission San Xavier del Bac.* Nothing in the 1966 Act authorizes development that would detract from the scenic, historic, and religious values of the Mission San Xavier del Bac owned by the Franciscan Order of Friars Minor and located on the San Xavier Reservation.

Subpart F—Non-Agricultural Leases

§ 162.600 What types of leases are covered by this subpart?

The regulations in this subpart apply to any leases other than agricultural leases, as defined in this part. To the extent that any of the regulations in this subpart conflict with the provisions of the Indian Land Consolidation Act Amendments of 2000, Pub. Law. 106–462, the provisions of that Act will govern.

§ 162.601 Grants of leases by Secretary.

(a) The Secretary may grant leases on individually owned land on behalf of:

(1) Persons who are non compos mentis;

(2) Orphaned minors;

(3) The undetermined heirs of a decedent's estate;

(4) The heirs or devisees to individually owned land who have not been able to agree upon a lease during the three-month period immediately following the date on which a lease may be entered into; provided, that the land is not in use by any of the heirs or devisees; and

(5) Indians who have given the Secretary written authority to execute leases on their behalf.

(b) The Secretary may grant leases on the individually owned land of an adult Indian whose whereabouts is unknown, on such terms as are necessary to protect and preserve such property.

(c) The Secretary may grant permits on Government land.

§ 162.602 Grants of leases by owners or their representatives.

The following may grant leases:

(a) Adults, other than those non compos mentis,

(b) Adults, other than those non compos mentis, on behalf of their minor children, and on behalf of minor children to whom they stand in loco parentis when such children do not have a legal representative,

(c) The guardian, conservator or other fiduciary, appointed by a state court or by a tribal court operating under an approved constitution or law and order code, of a minor or persons who are non compos mentis or are otherwise under legal disability,

(d) Tribes or tribal corporations acting through their appropriate officials.

§ 162.603 Use of land of minors.

The natural or legal guardian, or other person standing in loco parentis of minor children who have the care and custody of such children may use the individually owned land of such children during the period of minority without charge for the use of the land if such use will enable such person to engage in a business or other enterprise which will be beneficial to such minor children.

§ 162.604 Special requirements and provisions.

(a) All leases made pursuant to the regulations in this part shall be in the form approved by the Secretary and subject to his written approval.

(b) Except as otherwise provided in this part no lease shall be approved or granted at less than the present fair annual rental.

(1) An adult Indian owner of trust or restricted land may lease his land for religious, educational, recreational or other public purposes to religious organizations or to agencies of the federal, state or local government at a nominal rental. Such adult Indian may lease land to members of his immediate family with or without rental consideration.

(2) In the discretion of the Secretary, tribal land may be leased at a nominal rental for religious, educational, recreational, or other public purposes to religious organizations or to agencies of federal, state, or local governments; for purposes of subsidization for the benefit of the tribe; and for homesite purposes to tribal members provided the land is not commercial or industrial in character.

(3) Leases may be granted or approved by the Secretary at less than the fair annual rental when in his judgment such action would be in the best interest of the landowners.

(c) Unless otherwise provided by the Secretary a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing:

(1) Not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance.

(2) The estimated construction cost of any improvement to be placed on the land by the lessee.

(3) An amount estimated to be adequate to insure compliance with any additional contractual obligations.

(d) The lessee may be required to provide insurance in an amount adequate to protect any improvements on the leased premises; the lessee may also be required to furnish appropriate liability insurance, and such other insurance as may be necessary to protect the lessor's interest.

(e) No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal, except as otherwise provided in this part. No lease shall be entered into more than 12 months prior to the commencement of the term of the lease. Except with the approval of the Secretary no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. The lease contract shall contain provisions as to the dates rents shall become due and payable.

(f) Leases granted or approved under this part shall contain provisions as to whether payment of rentals is to be made direct to the owner of the land or his representative or to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(g) All leases issued under this part shall contain the following provisions:

(1) While the leased premises are in trust or restricted status, all of the lessee's obligations under this lease, and the obligations of his sureties, are to the United States as well as to the owner of the land.

(2) Nothing contained in this lease shall operate to delay or prevent a termination of federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. The owners of the land and the lessee and his surety or sureties shall be notified of any such change in the status of the land.

(3) The lessee agrees that he will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

(h) Leases granted or approved under this part on individually owned lands which provide for payment of rental direct to the owner or his representative shall contain the following provisions:

(1) In the event of the death of the owner during the term of this lease and while the leased premises are in trust or restricted status, all rentals remaining due or payable to the decedent or his representative under the provisions of the lease shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

(2) While the leased premises are in trust or restricted status, the Secretary may in his discretion suspend the direct rental payment provisions of this lease in which event the rentals shall be paid to the official of the Bureau of Indian Affairs having jurisdiction over the leased premises.

§ 162.605 Negotiation of leases.

(a) Leases of individually owned land or tribal land may be negotiated by those owners or their representatives who may execute leases pursuant to § 162.602 of this subpart.

(b) Where the owners of a majority interest, or their representatives, who may grant leases under § 162.602 of this subpart, have negotiated a lease satisfactory to the Secretary he may join in the execution of the lease and thereby commit the interests of those persons in whose behalf he is authorized to grant leases under § 162.601(a)(1), (2), (3), and (5) of this subpart.

(c) Where the Secretary may grant leases under § 162.601 of this subpart he may negotiate leases when in his judgment the fair annual rental can thus be obtained.

§ 162.606 Advertisement.

Except as otherwise provided in this part, prior to granting a lease or permit as authorized under § 162.601 of this subpart the Secretary shall advertise the land for lease. Advertisements will call for sealed bids and will not offer preference rights.

§ 162.607 Duration of leases.

Leases granted or approved under this part shall be limited to the minimum duration, commensurate with the purpose of the lease, that will allow the highest economic return to the owner consistent with prudent management and conservation practices, and except as otherwise provided in this part shall not exceed the number of years provided for in this section. Except for those leases authorized by § 162.604(b)(1) and (2) of this subpart, unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by the contract or the contribution value of such improvements. Any adjustments of rental resulting from such review may be made by the Secretary where he has the authority to grant leases, otherwise the adjustment must be made with the written concurrence of the owners and the approval of the Secretary.

(a) Leases for public, religious, educational, recreational, residential, or business purposes shall not exceed 25 years but may include provisions authorizing a renewal or an extension for one additional term of not to exceed 25 years, except such leases of land on the Hollywood (formerly Dania) Reservation, Fla.; the Navajo Reservation, Ariz., N. Mex., and Utah; the Palm Springs Reservation, Calif.; the Southern Ute Reservation, Colo.; the Fort Mohave Reservation, Calif., Ariz., and Nev.; the Pyramid Lake Reservation, Nev.; the Gila River Reservation, Ariz.; the San Carlos Apache Reservation, Ariz.; the Spokane Reservation, Wash.; the Hualapai Reservation, Ariz.; the Swinomish Reservation, Wash.; the Pueblos of Cochiti, Pojoaque, Tesuque, and Zuni, N. Mex.; and land on the Colorado River Reservation, Ariz., and Calif.; which leases may be made for terms of not to exceed 99 years.

(b) Leases granted by the Secretary pursuant to § 162.601(a)(3) of this subpart shall be for a term of not to exceed two years except as otherwise provided in § 162.605(b) of this subpart.

§ 162.608 Ownership of improvements.

Improvements placed on the leased land shall become the property of the lessor unless specifically excepted therefrom under the terms of the lease. The lease shall specify the maximum time allowed for removal of any improvements so excepted.

§ 162.609 Unitization for leasing.

Where it appears advantageous to the owners and advantageous to the operation of the land a single lease contract may include more than one parcel of land in separate ownerships, tribal or individual, provided the statutory authorities and other applicable requirements of this part are observed.

§ 162.610 Subleases and assignments.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a sublease, assignment, amendment or encumbrance of any lease or permit issued under this part may be made only with the approval of the Secretary and the written consent of all parties to such lease or permit, including the surety or sureties.

(b) With the consent of the Secretary, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the sublessor from any liability nor diminish any supervisory authority of the Secretary provided for under the approved lease.

(c) With the consent of the Secretary, the lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises. The encumbrance instrument, must be approved by the Secretary. If a sale or foreclosure under the approved encumbrance occurs and the encumbrancer is the purchaser, he may assign the leasehold without the approval of the Secretary or the consent of the other parties to the lease, provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the Secretary of any assignment will be required, and such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

(d) With the consent of the Secretary, leases of tribal land to individual members of the tribe or to tribal housing authorities may contain provisions permitting the assignment of the lease without further consent or approval where a lending institution or an agency of the United States makes, insures or guarantees a loan to an individual member of the tribe or to a tribal housing authority for the purpose of providing funds for the construction of housing for Indians on the leased premises; provided, the leasehold has been pledged as security for the loan and the lender has obtained the leasehold by foreclosure or otherwise. Such leases may with the consent of the Secretary also contain provisions permitting the lessee to assign the lease without further consent or approval.

§ 162.611 Payment of fees and drainage and irrigation charges.

(a) Any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

(b) We will charge an administrative fee each time we approve an agricultural lease, amendment, assignment, sublease, mortgage, or related document. These fees will be paid by the tenant, assignee, or subtenant, to cover our costs in preparing or processing the documents and administering the lease.

(c) Except as provided in paragraph (d) of this section, we will charge administrative fees based on the rent payable under the lease. The fee will be 3% of the annual rent payable, including any percentage or cropshare rent that can be reasonably estimated.

(d) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00, and any administrative fees that have been paid will be non-refundable. However, we may waive all or part of these administrative fees, in our discretion.

(e) If all or part of the expenses of the work are paid from tribal funds, the tribe may establish an additional or alternate schedule of fees.

§ 162.612 Can a lease provide for negotiated remedies in the event of a violation?

(a) A lease of tribal land may provide the tribe with certain negotiated

remedies in the event of a lease violation, including the power to terminate the lease. A lease of individually-owned land may provide the individual Indian landowners with similar remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the landowners.

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 162.619(c) of this subpart. If the lease specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

(c) A lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 162.619 of this subpart.

§ 162.613 Will BIA notify a tenant when a rent payment is due under a lease?

We may issue bills or invoices to a tenant in advance of the dates on which rent payments are due under a lease, but the tenant's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

§ 162.614 Will untimely rent payments made under a lease be subject to interest charges or late payment penalties?

A lease must specify the rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the tenant from us or the Indian landowners, and the failure to pay such amounts will be treated as a lease violation under § 162.618 of this subpart.

§ 162.615 What will BIA do if rent payments are not made in the time and manner required by a lease?

(a) A tenant's failure to pay rent in the time and manner required by a lease will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. If the lease requires that rent payments be made to us, we will send the tenant and its sureties a notice of violation within five business days of the date on which the rent payment was due. If the lease provides for payment directly to the Indian landowners, we will send the tenant and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the landowners.

(b) If a tenant fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 162.618(b) of this subpart, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the lease under § 162.619 of this subpart, or invoke any other remedies available under the lease or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the tenant, nor will such an action be precluded by a prior cancellation.

(c) Partial payments and underpayments may be accepted by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations. Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.

(d) If a personal or business check is dishonored, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under § 162.618 of this subpart. Any payment made to cure such a violation, and any future payments by the same tenant, must be made by an alternative payment method approved by us.

§ 162.616 Will any special fees be assessed on delinquent rent payments due under a lease?

The following special fees will be assessed if rent is not paid in the time and manner required, in addition to any interest or late payment penalties that must be paid to the Indian landowners under a lease. The following special fees will be assessed to cover administrative costs incurred by the United States in the collection of the debt:

The tenant will pay * * *	For * * *
(a) $50.00	Administrative fee for dishonored checks.
(b) $15.00	Administrative fee for BIA processing of each notice or demand letter.
(c) 18% of balance due.	Administrative fee charged by Treasury following referral for collection of delinquent debt.

§ 162.617 How will BIA determine whether the activities of a tenant under a lease are in compliance with the terms of the lease?

(a) Unless a lease provides otherwise, we may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the tenant is in compliance with the operating requirements of the lease.

(b) If an Indian landowner notifies us that a specific lease violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

§ 162.618 What will BIA do in the event of a violation under a lease?

(a) If we determine that a lease has been violated, we will send the tenant and its sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within ten business days of the receipt of a notice of violation, the tenant must:

(1) Cure the violation and notify us in writing that the violation has been cured;

(2) Dispute our determination that a violation has occurred and/or explain why we should not cancel the lease; or

(3) Request additional time to cure the violation.

§ 162.619 What will BIA do if a violation of a lease is not cured within the requisite time period?

(a) If the tenant does not cure a violation of a lease within the requisite time period, we will consult with the Indian landowners, as appropriate, and determine whether:

(1) The lease should be canceled by us under paragraph (c) of this section and §§ 162.620 through 162.621 of this subpart;

(2) We should invoke any other remedies available to us under the lease, including collecting on any available bond;

(3) The Indian landowners wish to invoke any remedies available to them under the lease; or

(4) The tenant should be granted additional time in which to cure the violation.

(b) If we decide to grant a tenant additional time in which to cure a violation, the tenant must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

(c) If we decide to cancel the lease, we will send the tenant and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the tenant by certified mail, return receipt requested. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) Notify the tenant of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;

(3) Notify the tenant of its right to appeal under part 2 of this chapter, as modified by § 162.620 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the tenant to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

§ 162.620 Will BIA's regulations concerning appeal bonds apply to cancellation decisions involving leases?

(a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from lease cancellation decisions made under § 162.619 of this subpart. Instead, when we decide to cancel an agricultural lease, we may require that the tenant post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the lease cancellation decision.

§ 162.621 When will a cancellation of a lease be effective?

A cancellation decision involving an agricultural lease will not be effective until 30 days after the tenant receives a cancellation letter from us. The cancellation decision will remain ineffective if the tenant files an appeal under § 162.620 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the tenant must continue to pay rent and comply with the other terms of the lease. If an appeal is not filed in accordance with § 162.620 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the tenant receives the cancellation letter from us.

§ 162.622 Can BIA take emergency action if the leased premises are threatened with immediate and significant harm?

If a tenant or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a lease, we will take appropriate emergency action. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either before or after the emergency action is taken.

§ 162.623 What will BIA do if a tenant holds over after the expiration or cancellation of a lease?

If a tenant remains in possession after the expiration or cancellation of a lease, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the tenant is engaged in negotiations with the Indian landowners to obtain a new lease, we will take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law.

PART 166—GRAZING PERMITS

5. Part 166 is revised to read as follows:

Subpart A—Purpose, Scope, and Definitions

Sec.
166.1 What is the purpose and scope of this part?
166.2 Can the BIA waive the application of these regulations?
166.3 May decisions under this part be appealed?
166.4 What terms do I need to know?

Subpart B—Tribal Policies and Laws Pertaining to Permits

166.100 What special tribal policies will we apply to permitting on Indian agricultural lands?
166.101 May individual Indian landowners exempt their land from certain tribal policies for permitting on Indian agricultural lands?
166.102 Do tribal laws apply to permits?
166.103 How will tribal laws be enforced on Indian agricultural land?
166.104 What notifications are required that tribal laws apply to permits on Indian agricultural lands?

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General Requirements

166.200 When is a permit needed to authorize possession of Indian land for grazing purposes?
166.201 Must parents or guardians of Indian minors who own Indian land obtain a permit before using land for grazing purposes?
166.202 May an emancipated minor grant a permit?
166.203 When can the Indian landowners grant a permit?
166.204 Who may represent an individual Indian landowner in granting a permit?
166.205 When can the BIA grant a permit on behalf of Indian landowners?
166.206 What requirements apply to a permit on a fractionated tract?
166.207 What provisions will be contained in a permit?
166.208 How long is a permit term?
166.209 Must a permit be recorded?
166.210 When is a decision by the BIA regarding a permit effective?
166.211 When are permits effective?
166.212 When may a permittee take possession of permitted Indian land?
166.213 Must I comply with any standards of conduct if I am granted a permit?
166.214 Will the BIA notify the permittee of any change in land title status?

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166.215 How can I find Indian land available for grazing?
166.216 Who is responsible for permitting Indian land?
166.217 In what manner may a permit on Indian land be granted?
166.218 How do I acquire a permit through tribal allocation?
166.219 How do I acquire a permit through negotiation?
166.220 What are the basic steps for acquiring a permit through negotiation?
166.221 How do I acquire an advertised permit through competitive bidding?
166.222 Are there standard permit forms?

Permit (Leasehold) Mortgage

166.223 Can I use a permit as collateral for a loan?
166.224 What factors does the BIA consider when reviewing a leasehold mortgage?
166.225 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?
166.226 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

Modifying a Permit

166.227 How can Indian land be removed from an existing permit?
166.228 How will the BIA provide notice if Indian land is removed from an existing permit?
166.229 Other than to remove land, how can a permit be amended, assigned, subpermitted, or mortgaged?

166.230 When will a BIA decision to approve an amendment, assignment, subpermit, or mortgage under a permit be effective?
166.231 Must an amendment, assignment, subpermit, or mortgage approved under a permit be recorded?

Subpart D—Land and Operations Management

166.300 How is Indian agricultural land managed?
166.301 How is Indian land for grazing purposes described?
166.302 How is a range unit created?
166.303 Can more than one parcel of Indian land be combined into one permit?
166.304 Can there be more than one permit for each range unit?
166.305 When is grazing capacity determined?
166.306 Can the BIA adjust the grazing capacity?
166.307 Will the grazing capacity be increased if I graze adjacent trust or non-trust rangelands not covered by the permit?
166.308 Can the number of animals and/or season of use be modified on the permitted land if I graze adjacent trust or non-trust rangelands under an on-and-off grazing permit?
166.309 Who determines livestock class and livestock ownership requirements on permitted Indian land?
166.310 What must a permittee do to protect livestock from exposure to disease?

Management Plans and Environmental Compliance

166.311 Is an Indian agricultural resource management plan required?
166.312 Is a conservation plan required?
166.313 Is environmental compliance required?

Conservation Practices and Improvements

166.314 Can a permittee apply a conservation practice on permitted Indian land?
166.315 Who is responsible for the completion and maintenance of a conservation practice if the permit expires or is canceled before the completion of the conservation practice?
166.316 Can a permittee construct improvements on permitted Indian land?
166.317 What happens to improvements constructed on Indian lands when the permit has been terminated?

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166.401 How does the BIA establish grazing rental rates?
166.402 Why must the BIA determine the fair annual rental of Indian land?
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166.404 Whose grazing rental rate will be applicable for a permit on tribal land?
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166.407 If a range unit consists of tribal and individually-owned Indian lands, what is the grazing rental rate?
166.408 Is the grazing rental rate established by the BIA adjusted periodically?

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166.410 When are grazing rental payments due?
166.411 Will a permittee be notified when a grazing rental payment is due?
166.412 What if the permittee does not receive an invoice that a grazing rental payment is due?
166.413 To whom are grazing rental payments made?
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166.415 What will the BIA do if the permittee fails to make a direct payment to an Indian landowner?
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166.417 May an individual Indian landowner modify the terms of the permit on a fractionated tract for advance grazing rental payment?
166.418 When is a grazing rental payment late?

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166.419 What will the BIA do if grazing rental payments are not made in the time and manner required by the permit?
166.420 Will any special fees be assessed on delinquent grazing rental payments due under a permit?
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166.422 What does the BIA do with grazing rental payments received from permittees?
166.423 How do Indian landowners receive grazing rental payments that the BIA has received from permittees?
166.424 How will the BIA determine the grazing rental payment amount to be distributed to each Indian landowner?

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166.500 Are there administrative fees for a permit?
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166.502 Are administrative fees refundable?
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166.601 How is the amount of the bond determined?
166.602 What form of bonds will the BIA accept?
166.603 If cash is submitted as a bond, how is it administered?
166.604 Is interest paid on a cash performance bond?
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166.607 Is insurance required for a permit?
166.608 What types of insurance may be required?

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166.700 What permit violations are addressed by this subpart?
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166.702 Can a permit provide for negotiated remedies in the event of a permit violation?
166.703 What happens if a permit violation occurs?
166.704 What will a written notice of a permit violation contain?
166.705 What will the BIA do if a permit violation is not cured within the required time period?
166.706 Will the BIA's regulations concerning appeal bonds apply to cancellation decisions involving permits?
166.707 When will a cancellation of a permit be effective?
166.708 Can the BIA take emergency action if the rangeland is threatened with immediate, significant, and irreparable harm?
166.709 What will the BIA do if a permittee holds over after the expiration or cancellation of a permit?

Subpart I—Trespass

166.800 What is trespass?
166.801 What is the BIA's trespass policy?
166.802 Who can enforce this subpart?

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Authority: 5 U.S.C. 301; R.S. 463, 25 U.S.C. 2; R.S. 465, 25 U.S.C. 9; Sec. 6, 96 Stat. 986, 25 U.S.C. 466. Interpret or apply R.S. 2078, 25 U.S.C. 68; R.S. 2117, 25 U.S.C. 179; Sec. 3, 26 Stat. 795, 25 U.S.C. 397; Sec. 1, 28 Stat. 305, 25 U.S.C. 402; Sec. 4, 36 Stat. 856, 25 U.S.C. 403; Sec. 1, 39 Stat. 128, 25 U.S.C. 394; Sec. 1, 41 Stat. 1232, 25 U.S.C. 393; Sec. 16, 17, 48 Stat. 987, 988, 25 U.S.C. 476, 477; Sec. 1, 2, 4, 5, 6, 69 Stat. 539, 540, 25 U.S.C. 415, 415a, 415b, 415c, 415d, 25 U.S.C. 3701, 3702, 3703, 3711, 3712, 3713, 3714, 3731, 3732, 3733, 3734, 3741, 3742, 3743, 3744, 3745, 107 Stat. 2011; 44 U.S.C. § 3101, *et seq.*)

Subpart A—Purpose, Scope, and Definitions

§ 166.1 What is the purpose and scope of this part?

(a) The purpose of this part is to describe the authorities, policies, and procedures the BIA uses to approve, grant, and administer a permit for grazing on tribal land, individually-owned Indian land, or government land.

(b) If the BIA's approval is not required for a permit, these regulations will not apply.

(c) These regulations do not apply to any tribal land which is permitted under a corporate charter issued by us pursuant to 25 U.S.C. § 477, or under a special act of Congress authorizing permits without our approval under certain conditions, except to the extent that the authorizing statutes require us to enforce such permits on behalf of the Indian landowners.

(d) To the extent that any provisions of this part conflict with Section 213 of the Indian Land Consolidation Act Amendments of 2000, the provisions of that act will govern.

(e) In approving a permit on behalf of the Indian landowners, the BIA will not permit for fee interest owners nor will we collect rent on behalf of fee interest owners. Our permitting of the trust and restricted interests of the Indian landowners will not be conditioned on a permit having been obtained from any fee interest owners. However, where all of the trust or restricted interests in a tract are subject to a life estate held in fee status, we will approve a permit of the remainder interests of the Indian landowners only if such action is necessary to preserve the value of the land or protect the interests of the Indian landowners. Where a life estate and remainder interest are both owned in trust or restricted status, the life estate and remainder interest must both be permitted under these regulations, unless the permit is for less than one year in duration. Unless otherwise provided by the document creating the life estate or by agreement, rent payable under the permit must be paid to the holder of the life estate under part 179 of this title.

§ 166.2 Can the BIA waive the application of these regulations?

Yes. In any case in which these regulations conflict with the objectives of the agricultural resource management plan provided for in § 166.311 of this part, or with a tribal law, the BIA may waive the application of such regulations unless the waiver would constitute a violation of a federal statute or judicial decision or would conflict with the BIA's general trust responsibility under federal law.

§ 166.3 May decisions under this part be appealed?

Yes. Except where otherwise provided in this part, appeals from decisions by the BIA under this part may be taken pursuant to 25 CFR part 2.

§ 166.4 What terms do I need to know?

Adult means an individual Indian who is 18 years of age or older.

Agency means the agency or field office or any other designated office in the Bureau of Indian Affairs (BIA) having jurisdiction over trust or restricted property or money.

Agricultural product means:

(1) Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;

(2) Domestic livestock, including cattle, sheep, goats, horses, buffalo, swine, reindeer, fowl, or other animals specifically raised and used for food or fiber or as a beast of burden;

(3) Forage, hay, fodder, food grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and

(4) Other marketable or traditionally used materials authorized for removal from Indian agricultural lands.

Agricultural resource management plan means a ten-year plan developed through the public review process specifying the tribal management goals and objectives developed for tribal agricultural and grazing resources. Plans developed and approved under AIARMA will govern the management and administration of Indian agricultural resources and Indian agricultural lands by the BIA and Indian tribal governments.

AIARMA means American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 *et seq.*), and amended on November 2, 1994 (108 Stat. 4572).

Allocation means the apportionment of grazing privileges without competition to tribal members or tribal entities, including the tribal designation of permittees and the number and kind of livestock to be grazed.

Animal Unit Month (AUM) means the amount of forage required to sustain one cow or one cow with one calf for one month.

Approving/approval means the action taken by the BIA to approve a permit.

Assign/assignment means an agreement between a permittee and an assignee, whereby the assignee acquires all of the permittee's rights, and

assumes all of the permittee's obligations under a permit.

Assignee means the person to whom the permit rights for use of Indian land are assigned.

BIA means the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of the BIA under this part.

Bond means security for the performance of certain permit obligations, as furnished by the permitee, or a guaranty of such performance as furnished by a third-party surety.

Conservation plan means a statement of management objectives for grazing, including contract stipulations defining required uses, operations, and improvements.

Conservation practice means a management action to protect, conserve, utilize, and maintain the sustained yield productivity of Indian agricultural land.

Day means a calendar day.

Encumbrance means mortgage, deed of trust or other instrument which secures a debt owed by a permittee to a lender or other holder of a leasehold mortgage on the permit interest.

Emancipated minor means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

Fair annual rental means the amount of rental income that a permitted parcel of Indian land would most probably command in an open and competitive market.

Farmland means Indian land, excluding Indian forest land, that is used for production of food, feed, fiber, forage, and seed, oil crops, or other agricultural products, and may be either dry land, irrigated land, or irrigated pasture.

Fee interest means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

Fractionated tract means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

Government land means any tract, or interest therein, in which the surface estate is owned by the United States and administered by the BIA, not including tribal land which has been reserved for administrative purposes.

Grant/granting means the process of the BIA or the Indian landowner agreeing or consenting to a permit.

Grazing capacity means the maximum sustainable number of livestock that may be grazed on a defined area and within a defined period, usually expressed in an Animal Unit Month (AUM).

Grazing rental payment means the total of the grazing rental rate multiplied by the number of AUMs or acres in the permit.

Grazing rental rate means the amount you must pay for an AUM or acre based on the fair annual rental.

I/You means the person to whom these regulations directly apply.

Immediate family means the spouse, brothers, sisters, lineal ancestors, lineal descendants, or members of the household of an individual Indian landowner.

Indian agricultural land means Indian land, including farmland and rangeland, excluding Indian forest land, that is used for production of agricultural products, and Indian lands occupied by industries that support the agricultural community, regardless of whether a formal inspection and land classification has been conducted.

Indian land means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status.

Indian landowner means a tribe or individual Indian who owns an interest in Indian land in trust or restricted status.

Individually-owned Indian land means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

Interest means, when used with respect to Indian land, an ownership right to the surface estate of Indian land that is unlimited or uncertain in duration, including a life estate.

Life estate means an interest in Indian land which is limited in duration to the life of the permittor holding the interest, or the life of some other person.

Majority interest means the ownership interest(s) that are greater than 50 percent of the trust or restricted ownership interest(s) in a tract of Indian land.

Minor means an individual who is less than 18 years of age.

Mortgage means a mortgage, deed of trust or other instrument which pledges a permittee's permit (leasehold) interest as security for a debt or other obligation owed by the permittee to a lender or other mortgagee.

Non compos mentis means a person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of transacting or conducting business and managing one's own affairs.

On-and-off grazing permit means a written agreement with a permittee for additional grazing capacity for other rangeland not covered by the permit.

Permit means a written agreement between Indian landowners and a permittee, whereby the permittee is granted a revocable privilege to use Indian land or Government land, for a specified purpose.

Permittee means an a person or entity who has acquired a legal right of possession to Indian land by a permit for grazing purposes under this part.

Range unit means rangelands consolidated to form a unit of land for the management and administration of grazing under a permit. A range unit may consist of a combination of tribal, individually-owned Indian, and/or government land.

Rangeland means Indian land, excluding Indian forest land, on which native vegetation is predominantly grasses, grass-like plants, half-shrubs or shrubs suitable for grazing or browsing use, and includes lands re-vegetated naturally or artificially to provide a forage cover that is managed as native vegetation.

Restricted land or restricted status means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

Subpermit means a written agreement, whereby the permittee grants to an individual or entity a right to possession (i.e., pasturing authorization), no greater than that held by the permittee under the permit.

Surety means one who guarantees the performance of another.

Sustained yield means the yield of agricultural products that a unit of land can produce continuously at a given level of use.

Trespass means any unauthorized occupancy, use of, or action on Indian lands.

Tribal land means the surface estate of land or any interest therein held by the United States in trust for a tribe, band, community, group or pueblo of Indians, and land that is held by a tribe, band, community, group or pueblo of Indians, subject to federal restrictions against alienation or encumbrance, and includes such land reserved for BIA administrative purposes when it is not immediately needed for such purposes. The term also includes lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 476).

Tribal law means the body of non-federal law that governs lands and

activities under the jurisdiction of a tribe, including ordinances or other enactments by the tribe, tribal court rulings, and tribal common law.

Trust land means any tract, or interest therein, that the United States holds in trust status for the benefit of a tribe or individual Indian.

Undivided interest means a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

Us/We/Our means the BIA and any tribe acting on behalf of the BIA under 166.1 of this part.

Uniform Standards of Professional Appraisal Practices (USPAP) means the standards promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

Written notice means a written letter mailed by way of United States mail, certified return receipt requested, postage prepaid, or hand-delivered letter.

Subpart B—Tribal Policies and Laws Pertaining to Permits

§ 166.100 What special tribal policies will we apply to permitting on Indian agricultural lands?

(a) When specifically authorized by an appropriate tribal resolution establishing a general policy for permitting of Indian agricultural lands, the BIA will:

(1) Waive the general prohibition against Indian operator preferences in permits advertised for bid under § 166.221 of this part, by allowing prospective Indian operators to match the highest responsible bid (unless the tribal law or leasing policy specifies some other manner in which the preference must be afforded);

(2) Waive or modify the requirement that a permittee post a surety or performance bond;

(3) Provide for posting of other collateral or security in lieu of surety or other bonds; and

(4) Approve permits of tribally-owned agricultural lands at rates determined by the tribal governing body.

(b) When specifically authorized by an appropriate tribal resolution establishing a general policy for permitting of Indian agricultural lands, and subject to paragraph (c) of this section, the BIA may:

(1) Waive or modify any general notice requirement of federal law; and

(2) Grant or approve a permit on ''highly fractionated undivided heirship lands'' as defined by tribal law.

(c) The BIA may take the action specified in paragraph (b) of this section only if:

(1) The tribe defines by resolution what constitutes ''highly fractionated undivided heirship lands'';

(2) The tribe adopts an alternative plan for notifying individual Indian landowners; and

(3) The BIA's action is necessary to prevent waste, reduce idle land acreage and ensure income.

§ 166.101 May individual Indian landowners exempt their land from certain tribal policies for permitting on Indian agricultural lands?

(a) The individual Indian landowners of Indian land may exempt their land from our application of a tribal policy referred to under § 166.100 of this part if:

(1) The Indian landowners have at least a 50% interest in such fractionated tract; and

(2) The Indian landowners submit a written objection to the BIA of all or any part of such tribal policies to the permitting of such parcel of land.

(b) Upon verification of the written objection we will notify the tribe of the Indian landowners' exemption from the specific tribal policy.

(c) The procedures described in paragraphs (a) and (b) of this section will also apply to withdrawing an approved exemption.

§ 166.102 Do tribal laws apply to permits?

Tribal laws will apply to permits of Indian land under the jurisdiction of the tribe enacting such laws, unless those tribal laws are inconsistent with applicable federal law.

§ 166.103 How will tribal laws be enforced on Indian agricultural land?

(a) Unless prohibited by federal law, we will recognize and comply with tribal laws regulating activities on Indian agricultural land, including tribal laws relating to land use, environmental protection, and historic or cultural preservation.

(b) While the tribe is primarily responsible for enforcing tribal laws pertaining to Indian agricultural land, we will:

(1) Assist in the enforcement of tribal laws;

(2) Provide notice of tribal laws to persons or entities undertaking activities on Indian agricultural land, under § 166.104(b) of this part; and

(3) Require appropriate federal officials to appear in tribal forums when requested by the tribe, so long as such an appearance would not:

(i) Be inconsistent with the restrictions on employee testimony set forth at 43 CFR Part 2, Subpart E;

(ii) Constitute a waiver of the sovereign immunity of the United States; or

(iii) Authorize or result in a review of our actions by a tribal court.

(c) Where the regulations in this subpart are inconsistent with a tribal law, but such regulations cannot be superseded or modified by the tribal law under § 166.2 of this part, we may waive the regulations under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

§ 166.104 What notifications are required that tribal laws apply to permits on Indian agricultural lands?

(a) Tribes must notify us of the content and effective dates of new tribal laws.

(b) We will then notify affected Indian landowners and any persons or entities undertaking activities on Indian agricultural lands of the superseding or modifying effect of the tribal law. We will:

(1) Provide individual written notice; or

(2) Post public notice. This notice will be posted at the tribal community building, U.S. Post Office, and/or published in the local newspaper nearest to the Indian lands where activities are occurring.

Subpart C—Permit Requirements

General Requirements

§ 166.200 When is a permit needed to authorize possession of Indian land for grazing purposes?

(a) Unless otherwise provided for in this part, any person or legal entity, including an independent legal entity owned and operated by a tribe, must obtain a permit under these regulations before taking possession of Indian land for grazing purposes.

(b) An Indian landowner who owns 100% of the trust or restricted interests in a tract may take possession of that Indian land without a permit or any other prior authorization from us.

(c) If an Indian landowner does not own 100 percent (%) of his or her Indian land and wants to use the Indian land for grazing purposes, a permit must be granted by the majority interest of the fractionated tract.

§ 166.201 Must parents or guardians of Indian minors who own Indian land obtain a permit before using land for grazing purposes?

Parents or guardians need not obtain a permit for Indian lands owned by their minor Indian children if:

(a) Those minor children own 100 percent (%) of the land; and

(b) The minor children directly benefit from the use of the land. We may require the user to provide evidence of the direct benefits to the minor children. When one of the minor children becomes an adult, the permit will have to be obtained from the majority interest.

§ 166.202 May an emancipated minor grant a permit?

Yes. An emancipated minor may grant a permit.

§ 166.203 When can the Indian landowners grant a permit?

(a) Tribes grant permits of tribal land, including any tribally-owned undivided interest(s) in a fractionated tract. A permit granted by the tribe must be approved by us, unless the permit is authorized by a charter approved by us under 25 U.S.C. § 477, or unless our approval is not required under other applicable federal law. In order to permit tribal land in which the beneficial interest has been assigned to another party, the assignee and the tribe must both grant the permit, subject to our approval.

(b) Individual Indian landowners may grant a permit of their land, including their undivided interest in a fractionated tract, subject to our approval. Except as otherwise provided in this part, these Indian landowners may include the owner of a life estate holding 100 percent (%) interest in their land.

(c) The owners of a majority interest in the Indian ownership of a fractionated tract may grant a permit, subject to our approval, without giving prior notice to the minority Indian landowners as long as the minority interest owners receive fair annual rental.

§ 166.204 Who may represent an individual Indian landowner in granting a permit?

The following individuals or entities may represent an individual Indian landowner in granting a permit:

(a) An adult with custody acting on behalf of their minor children;

(b) A guardian, conservator, or other fiduciary appointed by a court of competent jurisdiction to act on behalf of an individual Indian landowner;

(c) An adult or legal entity who has been given a written power of attorney that:

(1) Meets all of the formal requirements of any applicable tribal or state law;

(2) Identifies the attorney-in-fact and the land to be permitted; and

(3) Describes the scope of the power granted and any limits thereon.

§ 166.205 When can the BIA grant a permit on behalf of Indian landowners?

(a) We may grant a permit on behalf of:

(1) An individual who is adjudicated to be non compos mentis by a court of competent jurisdiction;

(2) An orphaned minor;

(3) An Indian landowner who has granted us written authority to permit his or her land;

(4) The undetermined heirs and devisees of a deceased Indian landowner;

(5) An Indian landowner whose whereabouts are unknown to us after a reasonable attempt is made to locate the Indian landowner;

(6) Indian landowners, where:

(i) We have provided written notice of our intent to grant a permit on their behalf, but the Indian landowners are unable to agree upon a permit during a three-month negotiation period immediately following such notice, or any other notice period established by a tribe under § 166.100(c)(2) of this part; and

(ii) The land is not being used by an individual Indian landowner under § 166.200 of this part.

(7) The individual Indian owners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

§ 166.206 What requirements apply to a permit on a fractionated tract?

We may grant a permit on behalf of all Indian landowners of a fractionated tract as long as the owners receive fair annual rental. Before granting such a permit, we may offer a preference right to any Indian landowner who:

(a) Is in possession of the entire tract;

(b) Submits a written offer to permit the land, subject to any required or negotiated terms and conditions, prior to our granting a permit to another party; and

(c) Provides any supporting documents needed to demonstrate the ability to perform all of the obligations under the proposed permit.

§ 166.207 What provisions will be contained in a permit?

A permit, at a minimum, must include:

(a) Authorized user(s);

(b) Conservation plan requirements;

(c) Prohibition against creating a nuisance, any illegal activity, and negligent use or waste or resources;

(d) Numbers and types of livestock allowed;

(e) Season(s) of use;

(f) Grazing rental payment, payment schedule, and late payment interest and penalties;

(g) Administrative fees;

(h) Tribal fees, if applicable;

(i) Payment method;

(j) Range unit number or name;

(k) Animal identification requirements;

(l) A description (preferably a legal description) of the permitted area;

(m) Term of permit (including beginning and ending dates of the term allowed, as well as any option to renew, extend or terminate);

(n) Conditions for making improvements, if any;

(o) A right of entry by the BIA for purposes of inspection or enforcement purposes;

(p) A provision concerning the applicability of tribal jurisdiction;

(q) A provision stating how trespass proceeds are to be distributed; and

(r) A provision for the permittee to indemnify the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials or the release or discharge of any hazardous material from the permitted premises that occur during the permit term, regardless of fault.

§ 166.208 How long is a permit term?

(a) The duration must be reasonable given the purpose of the permit and the level of investment required by the permittee to place the property into productive use.

(b) On behalf of the undetermined heirs of an individual Indian decedent owning 100 percent (%) interest in the land, we will grant or approve permits for a maximum term of two years.

(c) Permits granted for agricultural purposes will not usually exceed ten years. A term longer than ten years, but not to exceed 25 years unless authorized by other federal law, may be authorized when a longer term is determined by us to be in the best interest of the Indian landowners and when such permit requires substantial investment in the development of the lands by the permittee.

(d) A tribe may determine the duration of permits composed entirely of its tribal land or in combination with government land, subject to the same

limitations provided in paragraph (d) of this section.

(e) A permit will specify the beginning and ending dates of the term allowed, as well as any option to renew, extend, or terminate.

(f) Permits granted by us for protection of the Indian land will be for no more than two years.

§ 166.209 Must a permit be recorded?

A permit must be recorded in our Land Titles and Records Office which has jurisdiction over the land. We will record the permit immediately following our approval under this subpart.

§ 166.210 When is a decision by the BIA regarding a permit effective?

Our decision to approve a permit will be effective immediately, notwithstanding any appeal which may be filed under Part 2 of this title. Copies of the approved permit will be provided to the permitee and made available to the Indian landowners upon request.

§ 166.211 When are permits effective?

Unless otherwise provided in the permit, a permit will be effective on the date on which the permit is approved by us. A permit may be made effective on some past or future date, by agreement, but such a permit may not be granted or approved more than one year prior to the date on which the permit term is to commence.

§ 166.212 When may a permittee take possession of permitted Indian land?

The permittee may take possession of permitted Indian land on the date specified in the permit as the beginning date of the term, but not before we approve the permit.

§ 166.213 Must I comply with any standards of conduct if I am granted a permit?

Yes. Permittees are expected to:

(a) Conduct grazing operations in accordance with the principles of sustained yield management, agricultural resource management planning, sound conservation practices, and other community goals as expressed in tribal laws, agricultural resource management plans, and similar sources.

(b) Comply with all applicable laws, ordinances, rules, regulations, and other legal requirements. You must also pay all applicable penalties that may be assessed for non-compliance.

(c) Fulfill all financial obligations of your permit owed to the Indian landowners and the United States.

(d) Conduct only those activities authorized by the permit.

§ 166.214 Will the BIA notify the permittee of any change in land title status?

Yes. We will notify the permittee if a fee patent is issued or if restrictions are removed. After we notify the permittee our obligation under § 166.228 of this part ceases.

Obtaining A Permit

§ 166.215 How can I find Indian land available for grazing?

You may contact a local BIA office or tribal office to determine what Indian land may be available for grazing permits.

§ 166.216 Who is responsible for permitting Indian land?

The Indian landowner is primarily responsible for granting permits on their Indian land, with the assistance and approval of the BIA, except where otherwise provided by law. You may contact the local BIA or tribal office for assistance in obtaining a permit for grazing purposes on Indian land.

§ 166.217 In what manner may a permit on Indian land be granted?

(a) A tribe may grant a permit on tribal land through tribal allocation, negotiation, or advertisement in accordance with § 166.203 of this part. We must approve all permits of tribal land in order for the permit to be valid, except where otherwise provided by law.

(b) Individual Indian landowners may grant a permit on their Indian land through negotiation or advertisement in accordance with § 166.203 of this part. We must approve all permits of Individual Indian land in order for the permit to be valid.

(c) We will grant permits through negotiation or advertisement for range units containing, in whole or part, individually-owned Indian land and range units that consist of, or in combination with individually-owned Indian land, tribal or government land, under § 166.205 of this part. We will consult with tribes prior to granting permits for range units that include tribal land.

§ 166.218 How do I acquire a permit through tribal allocation?

(a) A tribe may allocate grazing privileges on range units containing trust or restricted land which is entirely tribally-owned or which contains only tribal and government land under the control of the tribe.

(b) A tribe may allocate grazing privileges to its members and to tribally-authorized entities without competitive bidding on tribal and tribally-controlled government land.

(c) We will implement the tribe's allocation procedure by authorizing the grazing privileges on individually-owned Indian land and government land, subject to the rental rate provisions in § 166.400(b) and (c) of this part.

(d) A tribe may prescribe the eligibility requirements for allocations 60 days before granting a new permit or before an existing permit expires.

(e) 120 days before the expiration of existing permits, we will notify the tribe of the 60-day period during which the tribe may prescribe eligibility requirements.

(f) We will prescribe the eligibility requirements after the expiration of the 60-day period in the event satisfactory action is not taken by the tribe.

(g) Grazing rental rates for grazing privileges allocated from an existing permit, in whole or in part, must equal or exceed the rates paid by the preceding permittee(s). Tribal members will pay grazing rental rates established by the tribe on tribal lands.

§ 166.219 How do I acquire a permit through negotiation?

(a) Permits may be negotiated and granted by the Indian landowners with the permittee of their choice. The BIA may negotiate and grant permits on behalf of Indian landowners pursuant to § 166.205 of this part.

(b) Upon the conclusion of negotiations with the Indian landowners or their representatives, and the satisfaction of any applicable conditions, you may submit an executed permit and any required supporting documents to us for appropriate action. Where a permit is in a form that has previously been accepted or approved by us, and all of the documents needed to support the findings required by this part have been received, we will decide whether to approve the permit within 30 days of the date of our receipt of the permit and supporting documents. If we decide to approve or disapprove a permit, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this title.

(c) In negotiating a permit, the Indian landowners may choose to include their land in the permit in exchange for their receipt of a share of the revenues or profits generated by the permit. Under such an arrangement, the permit may be granted to a joint venture or other legal entity owned, in part, by the Indian landowners.

(d) Receipt of permit payments based upon income received from the land will not, of itself, make the Indian

landowner a partner, joint venturer, or associate of the permittees.

(e) We will assist prospective permittees in contacting the Indian landowners or their representatives, for the purpose of negotiating a permit.

§ 166.220 What are the basic steps for acquiring a permit through negotiation?

The basic steps for acquiring a permit by negotiation are as follows:

(a) The BIA or the Indian landowner will:

(1) Receive a request to permit from an Indian landowner or the potential permittee;

(2) Prepare the permit documents; and

(3) Grant the permit.

(b) A potential permittee will complete the requirements for securing a permit, (e.g., bond, insurance, payment of administrative fee, etc.);

(c) We will:

(1) Review the permit for proper documentation and compliance with all applicable laws and regulations;

(2) Approve the permit after our review;

(3) Send the approved permit to the permittee and, upon request, to the Indian landowner; and

(4) Record and maintain the approved permit.

§ 166.221 How do I acquire an advertised permit through competitive bidding?

(a) As part of the negotiation of a permit, Indian landowners may advertise their Indian land to identify potential permittees with whom to negotiate.

(b) When the BIA grants and approves a permit on behalf of an individual Indian landowner using an advertisement for bids, we will:

(1) Prepare and distribute an advertisement of lands available for permit that identifies the terms and conditions of the permit sale, including, for agricultural permits, any preference rights;

(2) Solicit sealed bids and conduct the public permit sale;

(3) Determine and accept the highest or best responsible bidder(s), which may require further competitive bidding after the bid opening; and

(4) Prepare permits for successful bidders.

(c) After completion of the steps in paragraph (b) of this section, the successful bidder must complete and submit the permit and satisfy all applicable requirements, (e.g., bond, insurance, payment of administrative fee, etc.).

(d) After review of the permit documentation for proper completion and compliance with all applicable laws and regulations, within 30 days we will:

(1) Grant and approve the permit on behalf of Indian landowners where we are authorized to do so by law;

(2) Distribute the approved permit to the permittee(s) and, upon request, to the Indian landowner(s); and

(3) Record and maintain the approved permit.

§ 166.222 Are there standard permit forms?

Yes. Standard permit forms, including bid forms, permit forms, and permit modification forms are available at our agency offices.

Permit (Leasehold) Mortgage

§ 166.223 Can I use a permit as collateral for a loan?

We may approve a permit containing a provision that authorizes the permittee to encumber the permit interest, known as a leasehold mortgage, for the development and improvement of the permitted Indian land. We must approve the leasehold mortgage that encumbers the permit interest before it can be effective. We will record the approved leasehold mortgage instrument.

§ 166.224 What factors does the BIA consider when reviewing a leasehold mortgage?

(a) We will approve the leasehold mortgage if:

(1) All consents required in the permit have been obtained from the Indian landowners and any surety or guarantor;

(2) The mortgage covers only the permit interest, and no unrelated collateral belonging to the permittee;

(3) The financing being obtained will be used only in connection with the development or use of the permitted premises, and the mortgage does not secure any unrelated obligations owed by the permittee to the mortgagee; and

(4) We find no compelling reason to withhold our approval, in order to protect the best interests of the Indian landowner.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The ability to perform the permit obligations would be adversely affected by the cumulative mortgage obligations;

(2) Any negotiated permit provisions as to the allocation or control of insurance or condemnation proceeds would be modified;

(3) The remedies available to us or the Indian landowners would be limited (beyond the additional notice and cure rights to be afforded to the mortgagee), if the permittee defaults on the permit;

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a foreclosure, assignment in lieu of foreclosure, or issuance of a ''new permit'' to the mortgagee.

(c) We will notify the Indian landowners of our approval of the leasehold mortgage.

§ 166.225 May a permittee voluntarily assign a leasehold interest under an approved encumbrance?

With our approval, under an approved encumbrance, a permittee voluntarily may assign the leasehold interest to someone other than the holder of a leasehold mortgage if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the leasehold interest.

§ 166.226 May the holder of a leasehold mortgage assign the leasehold interest after a sale or foreclosure of an approved encumbrance?

Yes. The holder of a leasehold mortgage may assign a leasehold interest obtained by a sale or foreclosure of an approved encumbrance without our approval if the assignee agrees in writing to be bound by the terms of the permit. A permit may provide the Indian landowners with a right of first refusal on the conveyance of the permit interest (leasehold).

Modifying a Permit

§ 166.227 How can Indian land be removed from an existing permit?

(a)We will remove Indian land from the permit if:

(1)The trust status of the Indian land terminates;

(2) The Indian landowners request removal of their interest, with the written approval of the majority interest of the fractionated tract to be removed, and we determine that the removal is beneficial to such interests;

(3) A tribe allocates grazing privileges for Indian land covered by your permit under § 166.218 of this part;

(4) The permittee requests removal of the Indian land, the owners of the majority interest of the Indian land provides written approval of the removal of the Indian land, and we determine that the removal is warranted; or

(5) We determine that removal of the Indian land is appropriate, with the written approval of the owners of the majority interest of the Indian land.

(b) We will revise the grazing capacity to reflect the removal of Indian land and show it on the permit.

§ 166.228 How will the BIA provide notice if Indian land is removed from an existing permit?

If the reason for removal is:

(a) Termination of trust status. We will notify the parties to the permit in writing within 30 days. The removal will be effective on the next anniversary date of the permit.

(b) A request from Indian landowners or the permittee, or our determination. We will notify the parties to the permit in writing within 30 days of such request. The removal will be effective immediately if all sureties, Indian landowners, and permittee agree. Otherwise, the removal will be effective upon the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

(c) Tribal allocation under § 166.218 of this part. We will notify the parties to the permit in writing within 180 days of such action. The removal of tribal land will be effective on the next anniversary date of the permit. If our written notice is within 180 days of the anniversary date of the permit, the removal of Indian land will be effective 180 days after the written notice.

§ 166.229 Other than to remove land, how can a permit be amended, assigned, subpermitted, or mortgaged?

(a) We must approve an amendment, assignment, subpermit, or mortgage with the written consent of the parties to the permit in the same manner that the permit was approved, and the consent of the sureties.

(b) Indian landowners may designate in writing one or more of their co-owners or representatives to negotiate and/or agree to amendments on their behalf.

(1) The designated landowner or representative may:

(i) Negotiate or agree to amendments; and

(ii) Consent to or approve other items as necessary.

(2) The designated landowner or representative may not:

(i) Negotiate or agree to amendments that reduce the grazing rental payments payable to the other Indian landowners; or

(ii) Terminate the permit or modify the term of the permit.

(c) We may approve a permit for tribal land to individual members of a tribe which contains a provision permitting the assignment of the permit by the permittee or the lender without our approval when a lending institution or an agency of the United States:

(1) Accepts the interest in the permit (leasehold) as security for the loan; and

(2) Obtains the interest in the permit (leasehold) through foreclosure or otherwise.

(d) We will revise the grazing capacity and modify the permit.

§ 166.230 When will a BIA decision to approve an amendment, assignment, subpermit, or mortgage under a permit be effective?

Our decision to approve an amendment, assignment, subpermit, or mortgage under a permit will be effective immediately, notwithstanding any appeal which may be filed under Part 2 of this title. Copies of approved documents will be provided to the party requesting approval, and made available to the Indian landowners upon request.

§ 166.231 Must an amendment, assignment, subpermit, or mortgage approved under a permit be recorded?

An amendment, assignment, subpermit, or mortgage approved under a permit must be recorded in our Land Titles and Records Office which has jurisdiction over the Indian land. We will record the document immediately following our approval.

Subpart D—Land and Operations Management

§ 166.300 How is Indian agricultural land managed?

Tribes, individual Indian landowners, and the BIA will manage Indian agricultural land either directly or through contracts, compacts, cooperative agreements, or grants under the Indian Self-Determination and Education Assistance Act (Public Law 93–638, as amended).

§ 166.301 How is Indian land for grazing purposes described?

Indian land for grazing purposes should be described by legal description (e.g., aliquot parts, metes and bounds) or other acceptable description. Where there are undivided interests owned in fee status, the aggregate portion of trust and restricted interests should be identified in the description of the permitted land.

§ 166.302 How is a range unit created?

We create a range unit after we consult with the Indian landowners of rangeland, by designating units of compatible size, availability, and location.

§ 166.303 Can more than one parcel of Indian land be combined into one permit?

Yes. A permit may include more than one parcel of Indian land. Permits may include tribal land, individually-owned Indian land, or government land, or any combination thereof.

§ 166.304 Can there be more than one permit for each range unit?

Yes. There can be more than one permit for each range unit.

§ 166.305 When is grazing capacity determined?

Before we grant, modify, or approve a permit, in consultation with the Indian landowners, we will establish the total grazing capacity for each range unit based on the summation of each parcel's productivity. We will also establish the season(s) of use on Indian lands.

§ 166.306 Can the BIA adjust the grazing capacity?

Yes. In consultation with the Indian landowners or in the BIA's discretion based on good cause, we may adjust the grazing capacity using the best evaluation method(s) relevant to the ecological region.

§ 166.307 Will the grazing capacity be increased if I graze adjacent trust or non-trust rangelands not covered by the permit?

No. You will not receive an increase in grazing capacity in the permit if you graze trust or non-trust rangeland in common with the permitted land. Grazing capacity will be established only for Indian land covered by your permit.

§ 166.308 Can the number of animals and/or season of use be modified on the permitted land if I graze adjacent trust or non-trust rangelands under an on-and-off grazing permit?

Yes. The number of animals and/or season of use may be modified on permitted Indian land with an on-and-off grazing permit only when a conservation plan includes the use of adjacent trust or non-trust rangelands not covered by the permit and when that land is used in common with permitted land.

§ 166.309 Who determines livestock class and livestock ownership requirements on permitted Indian land?

(a) Tribes determine the class of livestock and livestock ownership requirements for livestock that may be grazed on range units composed entirely of tribal land or which include government land, subject to the grazing capacity prescribed by us under § 166.305 of this part.

(b) For permits on range units containing, in whole or part, individually-owned Indian land, we will adopt the tribal determination in paragraph (a) of this section.

§ 166.310 What must a permittee do to protect livestock from exposure to disease?

In accordance with applicable law, permittees must:

(a) Vaccinate livestock;

(b) Treat all livestock exposed to or infected with contagious or infectious diseases; and

(c) Restrict the movement of exposed or infected livestock.

Management Plans and Environmental Compliance

§ 166.311 Is an Indian agricultural resource management plan required?

(a) Indian agricultural land under the jurisdiction of a tribe must be managed in accordance with the goals and objectives in any agricultural resource management plan developed by the tribe, or by us in close consultation with the tribe, under the AIARMA.

(b) The ten-year agricultural resource management and monitoring plan must be developed through public meetings and completed within three years of the initiation of the planning activity. Such a plan must be developed through public meetings, and be based on the public meeting records and existing survey documents, reports, and other research from federal agencies, tribal community colleges, and land grant universities. When completed, the plan must:

(1) Determine available agricultural resources;

(2) Identify specific tribal agricultural resource goals and objectives;

(3) Establish management objectives for the resources;

(4) Define critical values of the tribe and its members and provide identified holistic management objectives; and

(5) Identify actions to be taken to reach established objectives.

(c) Where the regulations in this subpart are inconsistent with a tribe's agricultural resource management plan, we may waive the regulations under part 1 of this title, so long as the waiver does not violate a federal statute or judicial decision or conflict with our general trust responsibility under federal law.

§ 166.312 Is a conservation plan required?

A conservation plan must be developed for each permit with the permittee and approved by us prior to the issuance of the permit. The conservation plan must be consistent with the tribe's agricultural resource management plan and must address the permittee's management objectives regarding animal husbandry and resource conservation. The conservation plan must cover the entire permit period and reviewed by us on an annual basis.

§ 166.313 Is environmental compliance required?

Actions taken by the BIA under the regulations in this part must comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), applicable regulations of the Council on Environmental Quality (40 CFR part 1500), and applicable tribal laws and regulations.

Conservation Practices and Improvements

§ 166.314 Can a permittee apply a conservation practice on permitted Indian land?

Yes. A permittee can apply a conservation practice on permitted Indian land as long as the permittee has approval from the BIA and majority interest and the conservation practice is consistent with the conservation plan.

§ 166.315 Who is responsible for the completion and maintenance of a conservation practice if the permit expires or is canceled before the completion of the conservation practice?

Prior to undertaking a conservation practice, the BIA, landowner, and permittee will negotiate who will complete and maintain a conservation practice if the permit expires or is canceled before the conservation practice is completed. That conservation practice agreement will be reflected in the conservation plan and permit.

§ 166.316 Can a permittee construct improvements on permitted Indian land?

Improvements may be constructed on permitted Indian land if the permit contains a provision allowing improvements.

§ 166.317 What happens to improvements constructed on Indian lands when the permit has been terminated?

(a) If improvements are to be constructed on Indian land, the permit must contain a provision that improvements will either:

(1) Remain on the land upon termination of the permit, in a condition that is in compliance with applicable codes, to become the property of the Indian landowner; or

(2) Be removed and the land restored within a time period specified in the permit. The land must be restored as close as possible to the original condition prior to construction of such improvements. At the request of the permittee we may, at our discretion, grant an extension of time for the removal of improvements and restoration of the land for circumstances beyond the control of the permittee.

(b) If the permittee fails to remove improvements within the time allowed in the permit, the permittee may forfeit the right to remove the improvements and the improvements may become the property of the Indian landowner or at the request of the Indian landowner, we will apply the bond for the removal of the improvement and restoration of the land.

Subpart E—Grazing Rental Rates, Payments, and Late Payment Collections

Rental Rate Determination and Adjustment

§ 166.400 Who establishes grazing rental rates?

(a) For tribal lands, a tribe may establish a grazing rental rate that is less or more than the grazing rental rate established by us. We will assist a tribe to establish a grazing rental rate by providing the tribe with available information concerning the value of grazing on tribal lands.

(b) We will establish the grazing rental rate by determining the fair annual rental for:

(1) Individually-owned Indian lands; and

(2) Tribes that have not established a rate under paragraph (a) of this section.

(c) Indian landowners may give us written authority to grant grazing privileges on their individually-owned Indian land at a grazing rental rate that is:

(1) Above the grazing rental rate set by us; or

(2) Below the grazing rental rate set by us, subject to our approval, when the permittee is a member of the Indian landowner's immediate family as defined in this part.

§ 166.401 How does the BIA establish grazing rental rates?

An appraisal can be used to determine the rental value of real property. The development and reporting of the valuation will be completed in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). If an appraisal is not desired, competitive bids, negotiations, advertisements, or any other method can be used in conjunction with a market study, rent survey, or feasibility analysis developed in accordance with the USPAP.

§ 166.402 Why must the BIA determine the fair annual rental of Indian land?

The BIA must determine the fair annual rental of Indian land to:

(a) Assist the Indian landowner in negotiating a permit with potential permittees; and

(b) Enable us to determine whether a permit is in the best interests of the Indian landowner.

§ 166.403 Will the BIA ever grant or approve a permit at less than fair annual rental?

(a) We will grant a permit for grazing on individually-owned Indian land at less than fair annual rental if, after competitive bidding of the permit, we determine that such action would be in the best interests of the individual Indian landowners.

(b) We may approve a permit for grazing on individually-owned Indian land at less than fair annual rental if:

(1) The permit is for the Indian landowner's immediate family or co-owner; or

(2) We determine it is in the best interest of the Indian landowners.

(c) We may approve a permit for grazing on tribal land at less than fair annual rental if the tribe sets the rate.

§ 166.404 Whose grazing rental rate will be applicable for a permit on tribal land?

The following grazing rental rate schedule will apply for tribal land:

If you are * * *	And if * * *	Then you will pay * * *
(a) Grazing livestock on tribal land	The tribe established the grazing rental rate	The rate set by the tribe.
(b) Grazing livestock on tribal land	No tribal grazing rental rate has been established.	The rate set by the BIA.
(c) The successful bidder for use of any of these specific parcels of Indian land.		Your rental rate bid, but not less than the minimum bid rate advertised.

§ 166.405 Whose grazing rental rate will be applicable for a permit on individually-owned Indian land?

The following grazing rental rate schedule will apply for individually-owned Indian land:

If you are * * *	Then you will pay * * *
(a) Grazing livestock on Individually-owned Indian land.	The rate set by the BIA or by the individual Indian landowner and approved by us.
(b) The successful bidder for use of any of these specific parcels of Indian land.	Your rental rate bid, but not less than the minimum bid rate advertised, unless the permit is granted at less than fair annual rental under § 166.403.
(c) The recipient of an allocation from a bid unit	The bid rate or the appraised rate, whichever is higher.

§ 166.406 Whose grazing rental rate will be applicable for a permit on government land?

The following grazing rental rate schedule will apply for government land:

If you are * * *	And if * * *	Then you will pay * * *
(a) Grazing livestock on government land	The tribe has control over the land or the tribe has authority to set the rate.	The rate set by the tribe.
(b) Grazing livestock on government land	Government controls all use of the land	The rate set by the BIA.

§ 166.407 If a range unit consists of tribal and individually-owned Indian lands, what is the grazing rental rate?

The grazing rental rate for tribal land will be the rate set by the tribe. The grazing rental rate for individually-owned Indian land will be the grazing rental rate set by us.

§ 166.408 Is the grazing rental rate established by the BIA adjusted periodically?

Yes. To ensure that Indian landowners are receiving the fair annual return, we may adjust the grazing rental rate established by the BIA, based upon an appropriate valuation method, taking into account the value of improvements made under the permit, unless the permit provides otherwise, following the Uniform Standards of Professional Appraisal Practice.

(a) We will:

(1) Review the grazing rental rate prior to each anniversary date or when specified by the permit.

(2) Provide you with written notice of any adjustment of the grazing rental rate 60 days prior to each anniversary date.

(3) Allow the adjusted grazing rental rate to be less than the fair annual rental if we determine that such a rate is in the best interest of the Indian landowner.

(b) If adjusted, the grazing rental rate will become effective on the next anniversary date of the permit.

(c) These adjustments will be retroactive, if they are not made at the time specified in the permit.

(d) For permits granted by tribes, we will consult with the granting tribe to determine whether an adjustment of the grazing rental payment should be made. The permit must be modified to document the granting tribe's waiver of the adjustment. A tribe may grant a permit without providing for a rental adjustment, if the tribe establishes such a policy under § 166.100(a)(4) of this part and negotiates such a permit.

Rental Payments

§ 166.409 How is my grazing rental payment determined?

The grazing rental payment is the total of the grazing rental rate multiplied by the number of AUMs or acres covered by the permit.

§ 166.410 When are grazing rental payments due?

The initial grazing rental payment is due and payable as specified in the permit or 15 days after the BIA approves the permit, whichever is later. Subsequent payments are due as specified in the permit.

§ 166.411 Will a permittee be notified when a grazing rental payment is due?

Each permit states the schedule of rental payments agreed to by the parties. We will issue an invoice to the permittee 30 to 60 days prior to the rental payment due date.

§ 166.412 What if the permittee does not receive an invoice that a grazing rental payment is due?

If we fail to send an invoice or if we send an invoice and the permittee does not receive it, the permittee is still responsible for making timely payment of all amounts due under the permit.

§ 166.413 To whom are grazing rental payments made?

(a) A permit must specify whether grazing rental payments will be made

directly to the Indian landowners or to us on behalf of the Indian landowners. If the permit provides for payment to be made directly to the Indian landowners, the permit must also require that the permittee retain specific documentation evidencing proof of payment, such as canceled checks, cash receipt vouchers, or copies of money orders or cashier's checks, consistent with the provisions of §§ 166.1000 and 166.1001 of this part.

(b) Grazing rental payments made directly to the Indian landowners must be made to the parties specified in the permit, unless the permittee receives a notice of a change of ownership. Unless otherwise provided in the permit, grazing rental payments may not be made payable directly to anyone other than the Indian landowners.

(c) A permit which provides for grazing rental payments to be made directly to the Indian landowners must also provide for such payments to be suspended and rent thereafter paid to us, rather than directly than to the Indian landowners, if:

(1) An Indian landowner dies;

(2) An Indian landowner requests that payment be made to us;

(3) An Indian landowner is found by us to be in need of assistance in managing his/her financial affairs; or

(4) We determine, in our discretion and after consultation with the Indian landowner(s), that direct payment should be discontinued.

§ 166.414 What forms of grazing rental payments are acceptable?

(a) When grazing rental payments are made directly to the Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) Payments made to us may be delivered in person or by mail. We will not accept cash, foreign currency, or third-party checks. We will accept:

(1) Personal or business checks drawn on the account of the permittee;

(2) Money orders;

(3) Cashier's checks;

(4) Certified checks; or

(5) Electronic funds transfer payments.

§ 166.415 What will the BIA do if the permittee fails to make a direct payment to an Indian landowner?

Within five business days of the Indian landowner's notification to us that a payment has not been received, we will contact the permittee either in writing or by telephone requesting that the permittee provide documentation (e.g., canceled check, cash receipt voucher, copy of a money order or cashier's check) showing that payment has been made to the Indian landowner. If the permittee fails to provide such documentation, we will follow the procedures identified in § 166.419 of this part to collect the money on behalf of the Indian landowner or to cancel the permit.

§ 166.416 May a permittee make a grazing rental payment in advance of the due date?

Rent may be paid no more than 30 days in advance, unless otherwise specified in the permit.

§ 166.417 May an individual Indian landowner modify the terms of the permit on a fractionated tract for advance grazing rental payment?

No. An individual Indian landowner of a fractionated tract may not modify a permit to allow a grazing rental payment in advance of the due date specified in the initial approved permit.

§ 166.418 When is a grazing rental payment late?

A grazing rental payment is late if it is not received on or before the due date.

Late Rental Payment Collections

§ 166.419 What will the BIA do if grazing rental payments are not made in the time and manner required by the permit?

(a) A permitee's failure to pay grazing rental payments in the time and manner required by a permit will be a violation of the permit, and a notice of violation will be issued under § 166.703 of this part. If the permit requires that grazing rental payments be made to us, we will send the permittee and its sureties a notice of violation within five business days of the date on which the grazing rental payment was due. If the permit provides for payment directly to the Indian landowner(s), we will send the permittee and its sureties a notice of violation within five business days of the date on which we receive actual notice of non-payment from the Indian landowner(s).

(b) If a permittee fails to provide adequate proof of payment or cure the violation within the requisite time period described in § 166.704 of this part, and the amount due is not in dispute, we may immediately take action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. We may also cancel the permit under § 166.705 of this part, or invoke any other remedies available under the permit or applicable law, including collection on any available bond or referral of the debt to the Department of the Treasury for collection. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the permit or any further notice to the permittee, nor will such an action be precluded by a prior cancellation.

(c) Partial payments may be accepted, under special circumstances, by the Indian landowners or us, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing permit violations. Unless otherwise provided in the permit, overpayments may be credited as an advance against future grazing rental payments.

(d) If a personal or business check is dishonored, and a grazing rental payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the permit, and a written notice of violation will be issued under § 166.703 of this part. Any payment made to cure such a default, and any future payments by the same permittee, must be made by one of the alternative payment methods listed in § 166.414(b) of this part.

§ 166.420 Will any special fees be assessed on delinquent grazing rental payments due under a permit?

The following special fees will be assessed if a grazing rental payment is not paid in the time and manner required, in addition to any interest or late payment penalties which must be paid to the Indian landowners under a permit. The following special fees will be assessed to cover administrative costs incurred by the United States in the collection of the debt:

The permittee will pay * * *	For * * *
(a) $50.00	Administrative fee for checks returned by the bank for insufficient funds.
(b) $15.00	Administrative fee for the BIA processing of each demand letter.
(c) 18% of balance due.	Administrative fee charged by the Department of Treasury for collection.

§ 166.421 If a permit is canceled for non-payment, does that extinguish the permittee's debt?

No. The permittee remains liable for any delinquent payment. No future permits will be issued until all outstanding debts related to Indian agricultural lands are paid.

Compensation to Indian Landowners

§ 166.422 What does the BIA do with grazing rental payments received from permittees?

Unless arrangements for direct payment to the Indian landowners has been provided, the rent will be deposited to the appropriate account

maintained by the Office of Trust Funds Management in accordance with part 115 of this title.

§ 166.423 How do Indian landowners receive grazing rental payments that the BIA has received from permittees?

Funds will be paid to the Indian landowners by the Office of Trust Funds Management in accordance with 25 CFR part 115.

§ 166.424 How will the BIA determine the grazing rental payment amount to be distributed to each Indian landowner?

Unless otherwise specified in the permit, the grazing rental payment will be distributed to each Indian landowner according to the forage production that each parcel of Indian land contributes to the permit, annual rental rate of each parcel, and the Indian landowner's interest in each parcel.

Subpart F—Administrative and Tribal Fees

§ 166.500 Are there administrative fees for a permit?

Yes. We will charge an administrative fee before approving any permit, subpermit, assignment, encumbrance, modification, or other related document.

§ 166.501 How are annual administrative fees determined?

(a) Except as provided in subsection (b), we will charge a three percent (%) administrative fee based on the annual grazing rent.

(b) The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00.

(c) If a tribe performs all or part of the administrative duties for this part, the tribe may establish, collect, and use reasonable fees to cover its costs associated with the performance of administrative duties.

§ 166.502 Are administrative fees refundable?

No. We will not refund administrative fees.

§ 166.503 May the BIA waive administrative fees?

Yes. We may waive the administrative fee for a justifiable reason.

§ 166.504 Are there any other administrative or tribal fees, taxes, or assessments that must be paid?

Yes. The permittee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land as determined by us or by the tribe. Failure to make such payments will constitute a permit violation under subpart H of this part.

Subpart G—Bonding and Insurance Requirements

§ 166.600 Must a permittee provide a bond for a permit?

Yes. A permittee, assignee or subpermittee must provide a bond for each permit interest acquired. Upon request by an Indian landowner, we may waive the bond requirement.

§ 166.601 How is the amount of the bond determined?

(a) The amount of the bond for each permit is based on the:

(1) Value of one year's grazing rental payment;

(2) Value of any improvements to be constructed;

(3) Cost of performance of any additional obligations; and

(4) Cost of performance of restoration and reclamation.

(b) Tribal policy made applicable by § 166.100 of this part may establish or waive specific bond requirements for permits.

§ 166.602 What form of bonds will the BIA accept?

(a) We will only accept bonds in the following forms:

(1) Cash;

(2) Negotiable Treasury securities that:

(i) Have a market value equal to the bond amount; and

(ii) Are accompanied by a statement granting full authority to the BIA to sell such securities in case of a violation of the terms of the permit.

(3) Certificates of deposit that indicate on their face that Secretarial approval is required prior to redemption by any party;

(4) Irrevocable letters of credit (LOC) issued by federally-insured financial institutions authorized to do business in the United States. LOC's must:

(i) Contain a clause that grants the BIA authority to demand immediate payment if the permittee defaults or fails to replace the LOC within 30 calendar days prior to its expiration date;

(ii) Be payable to the ''Department of the Interior, BIA'';

(iii) Be irrevocable during its term and have an initial expiration date of not less than one year following the date we receive it; and

(iv) Be automatically renewable for a period of not less than one year, unless the issuing financial institution provides the BIA with written notice at least 90 calendar days before the letter of credit's expiration date that it will not be renewed;

(5) Surety bond; or

(6) Any other form of highly liquid, non-volatile security subsequently approved by us that is easily convertible to cash by us and for which our approval is required prior to redemption by any party.

(b) Indian landowners may negotiate a permit term that specifies the use of any of the bond forms described in paragraph (a) of this section.

(c) A tribe may accept and hold any form of bond described in paragraph (a) of this section, to secure performance under a permit of tribal land.

§ 166.603 If cash is submitted as a bond, how is it administered?

If cash is submitted as a bond, we will establish an account in the name of the permittee and retain it.

§ 166.604 Is interest paid on a cash performance bond?

No. Interest will not be paid on a cash performance bond.

§ 166.605 Are cash performance bonds refunded?

If the cash performance bond has not been forfeited for cause, the amount deposited will be refunded to the depositor at the end of the permit period.

§ 166.606 What happens to a bond if a violation occurs?

We may apply the bond to remedy the violation, in which case we will require the permittee to submit a replacement bond of an appropriate amount.

§ 166.607 Is insurance required for a permit?

When we determine it to be in the best interest of the Indian landowners, we will require a permittee to provide insurance. If insurance is required, it must:

(a) Be provided in an amount sufficient to:

(1) Protect any improvements on the permit premises;

(2) Cover losses such as personal injury or death; and

(3) Protect the interest of the Indian landowner.

(b) Identify the tribe, individual Indian landowners, and United States as insured parties.

§ 166.608 What types of insurance may be required?

We may require liability or casualty insurance (such as for fire, hazard, or flood), depending upon the activity conducted under the permit.

Subpart H—Permit Violations

§ 166.700 What permit violations are addressed by this subpart?

This subpart addresses violations of permit provisions other than trespass. Trespass is addressed under subpart I of this part.

§ 166.701 How will the BIA determine whether the activities of a permittee under a permit are in compliance with the terms of the permit?

Unless the permit provides otherwise, we may enter the range unit at any reasonable time, without prior notice, to protect the interests of the Indian landowners and ensure that the permittee is in compliance with the operating requirements of the permit.

§ 166.702 Can a permit provide for negotiated remedies in the event of a permit violation?

(a) A permit of tribal land may provide the tribe with certain negotiated remedies in the event of a permit violation, including the power to terminate the permit. A permit of individually-owned Indian land may provide the individual Indian landowners with similar remedies, so long as the permit also specifies the manner in which those remedies may be exercised by or on behalf of the Indian landowners. Any notice of violation must be provided by written notice.

(b) The negotiated remedies described in paragraph (a) of this section will apply in addition to the cancellation remedy available to us under § 166.705(c) of this subpart. If the permit specifically authorizes us to exercise any negotiated remedies on behalf of the Indian landowners, the exercise of such remedies may substitute for cancellation.

(c) A permit may provide for permit disputes to be resolved in tribal court or any other court of competent jurisdiction, or through arbitration or some other alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to any ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us under § 166.705 of this subpart.

§ 166.703 What happens if a permit violation occurs?

(a) If an Indian landowner notifies us that a specific permit violation has occurred, we will initiate an appropriate investigation within five business days of that notification.

(b) If we determine that a permit violation has occurred based on facts known to us, we will provide written notice to the permittee and the sureties of the violation within five business days.

§ 166.704 What will a written notice of a permit violation contain?

The written notice of a permit violation will provide the permittee with ten days from the receipt of the written notice to:

(a) Cure the permit violation and notify us that the violation is cured.

(b) Explain why we should not cancel the permit; or

(c) Request in writing additional time to complete corrective actions. If additional time is granted, we may require that certain corrective actions be taken immediately.

§ 166.705 What will the BIA do if a permit violation is not cured within the required time period?

(a) If the permittee does not cure a violation within the required time period, we will consult with the Indian landowners, as appropriate, and determine whether:

(1) The permit should be canceled by us under paragraph (c) of this section and §§ 166.706 through 166.707 of this subpart;

(2) We should invoke any other remedies available to us under the permit, including collecting on any available bond;

(3) The Indian landowners wish to invoke any remedies available to them under the permit; or

(4) The permittee should be granted additional time in which to cure the violation.

(b) If we decide to grant a permittee additional time in which to cure a violation, the permittee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

(c) If we decide to cancel the permit, we will send the permittee and its sureties a written notice of cancellation within five business days of that decision. We will also provide actual or constructive notice of a cancellation decision to the Indian landowners, as appropriate. The written notice of cancellation will:

(1) Explain the grounds for cancellation;

(2) Notify the permittee of the amount of any unpaid rent, interest charges, or late payment penalties due under the permit;

(3) Notify the permittee of its right to appeal under Part 2 of this chapter, as modified by § 166.706 of this subpart, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and

(4) Order the permittee to vacate the property within 30 days of the date of receipt of the written notice of cancellation, if an appeal is not filed by that time.

§ 166.706 Will the BIA's regulations concerning appeal bonds apply to cancellation decisions involving permits?

(a) The appeal bond provisions in § 2.5 of part 2 of this chapter will not apply to appeals from permit cancellation decisions made under § 166.705 of this subpart. Instead, when we decide to cancel a permit, we may require the permittee to post an appeal bond with an appeal of the cancellation decision. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) An appeal bond should be set in an amount necessary to protect the Indian landowners against financial losses that will likely result from the delay caused by an appeal. Appeal bond requirements will not be separately appealable, but may be contested during the appeal of the permit cancellation decision.

§ 166.707 When will a cancellation of a permit be effective?

A cancellation decision involving a permit will not be effective for 30 days after the permittee receives a written notice of cancellation from us. The cancellation decision will remain ineffective if the permittee files an appeal under § 166.706 of this subpart and part 2 of this chapter, unless the decision is made immediately effective under part 2. While a cancellation decision is ineffective, the permittee must continue to pay rent and comply with the other terms of the permit. If an appeal is not filed in accordance with § 166.706 of this subpart and part 2 of this chapter, the cancellation decision will be effective on the 31st day after the permittee receives the written notice of cancellation from us.

§ 166.708 Can the BIA take emergency action if the rangeland is threatened with immediate, significant, and irreparable harm?

Yes. If a permittee or any other party causes or threatens to cause immediate, significant and irreparable harm to the Indian land during the term of a permit, we will take appropriate emergency action. Emergency action may include trespass proceedings under subpart I of this part, or judicial action seeking immediate cessation of the activity resulting in or threatening the harm. Reasonable efforts will be made to notify the Indian landowners, either

before or after the emergency action is taken.

§ 166.709 What will the BIA do if a permittee holds over after the expiration or cancellation of a permit?

If a permittee remains in possession of Indian land after the expiration or cancellation of a permit, we will treat the unauthorized use as a trespass. Unless we have reason to believe that the permittee is engaged in negotiations with the Indian landowners to obtain a new permit, we will take action to recover possession of the Indian land on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, including the assessment of civil penalties and costs under subpart I of this part.

Subpart I—Trespass

§ 166.800 What is trespass?

Under this part, trespass is any unauthorized occupancy, use of, or action on Indian agricultural lands. These provisions also apply to Indian agricultural land managed under an agricultural lease or permit under part 162 of this title.

§ 166.801 What is the BIA's trespass policy?

We will:

(a) Investigate accidental, willful, and/or incidental trespass on Indian agricultural land;

(b) Respond to alleged trespass in a prompt, efficient manner;

(c) Assess trespass penalties for the value of products used or removed, cost of damage to the Indian agricultural land, and enforcement costs incurred as a consequence of the trespass.

(d) Ensure that damage to Indian agricultural lands resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

§ 166.802 Who can enforce this subpart?

(a) The BIA enforces the provisions of this subpart. If the tribe adopts the provisions of this subpart, the tribe will have concurrent jurisdiction to enforce this subpart. Additionally, if the tribe so requests, we will defer to tribal prosecution of trespass on Indian agricultural lands.

(b) Nothing in this subpart shall be construed to diminish the sovereign authority of Indian tribes with respect to trespass.

Notification

§ 166.803 How are trespassers notified of a trespass determination?

(a) Unless otherwise provided under tribal law, when we have reason to believe that a trespass on Indian agricultural land has occurred, within five business days, we or the authorized tribal representative will provide written notice to the alleged trespasser, the possessor of trespass property, any known lien holder, and beneficial Indian landowner, as appropriate. The written notice will include the following:

(1) The basis for the trespass determination;

(2) A legal description of where the trespass occurred;

(3) A verification of ownership of unauthorized property (*e.g.*, brands in the State Brand Book for cases of livestock trespass, if applicable);

(4) Corrective actions that must be taken;

(5) Time frames for taking the corrective actions;

(6) Potential consequences and penalties for failure to take corrective action; and

(7) A statement that unauthorized livestock or other property may not be removed or disposed of unless authorized by us.

(b) If we determine that the alleged trespasser or possessor of trespass property is unknown or refuses delivery of the written notice, a public trespass notice will be posted at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) Trespass notices under this subpart are not subject to appeal under 25 CFR part 2.

§ 166.804 What can I do if I receive a trespass notice?

If you receive a trespass notice, you will within the time frame specified in the notice:

(a) Comply with the ordered corrective actions; or

(b) Contact us in writing to explain why the trespass notice is in error. You may contact us by telephone but any explanation of trespass you wish to provide must be in writing. If we determine that we issued the trespass notice in error, we will withdraw the notice.

§ 166.805 How long will a written trespass notice remain in effect?

A written trespass notice will remain in effect for the same conduct identified in that written notice for a period of one year from the date of receipt of the written notice by the trespasser.

Actions

§ 166.806 What actions does the BIA take against trespassers?

If the trespasser fails to take the corrective action specified by us, we may take one or more of the following actions, as appropriate:

(a) Seize, impound, sell or dispose of unauthorized livestock or other property involved in the trespass. We may keep such property we seize for use as evidence.

(b) Assess penalties, damages, and costs, under § 166.812 of this subpart.

§ 166.807 When will we impound unauthorized livestock or other property?

We will impound unauthorized livestock or other property under the following conditions:

(a) Where there is imminent danger of severe injury to growing or harvestable crop or destruction of the range forage.

(b) When the known owner or the owner's representative of the unauthorized livestock or other property refuses to accept delivery of a written notice of trespass and the unauthorized livestock or other property are not removed within the period prescribed in the written notice.

(c) Any time after five days of providing notice of impoundment if you failed to correct the trespass.

§ 166.808 How are trespassers notified if their unauthorized livestock or other property are to be impounded?

(a) If the trespass is not corrected in the time specified in the initial trespass notice, we will send written notice of our intent to impound unauthorized livestock or other property to the unauthorized livestock or property owner or representative, and any known lien holder of the unauthorized livestock or other property.

(b) If we determine that the owner of the unauthorized livestock or other property or the owner's representative is unknown or refuses delivery of the written notice, we will post a public notice of intent to impound at the tribal community building, U.S. Post Office, and published in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring.

(c) After we have given notice as described above, we will impound unauthorized livestock or other property without any further notice.

§ 166.809 What happens after my unauthorized livestock or other property are impounded?

Following the impoundment of unauthorized livestock or other property, we will provide notice that we will sell the impounded property as follows:

(a) We will provide written notice of the sale to the owner, the owner's representative, and any known lien holder. The written notice must include the procedure by which the impounded property may be redeemed prior to the sale.

(b) We will provide public notice of sale of impounded property by posting at the tribal community building, U.S. Post Office, and publishing in the local newspaper nearest to the Indian agricultural lands where the trespass is occurring. The public notice will include a description of the impounded property, and the date, time, and place of the public sale. The sale date must be at least five days after the publication and posting of notice.

§ 166.810 How do I redeem my impounded livestock or other property?

You may redeem impounded livestock or other property by submitting proof of ownership and paying all penalties, damages, and costs under § 166.812 of this subpart and completing all corrective actions identified by us under § 166.804 of this subpart.

§ 166.811 How will the sale of impounded livestock or other property be conducted?

(a) Unless the owner or known lien holder of the impounded livestock or other property redeems the property prior to the time set by the sale, by submitting proof of ownership and settling all obligations under § 166.804 and § 166.812 of this subpart, the property will be sold by public sale to the highest bidder.

(b) If a satisfactory bid is not received, the livestock or property may be re-offered for sale, returned to the owner, condemned and destroyed, or otherwise disposed of.

(c) We will give the purchaser a bill of sale or other written receipt evidencing the sale.

Penalties, Damages, and Costs

§ 166.812 What are the penalties, damages, and costs payable by trespassers on Indian agricultural land?

Trespassers on Indian agricultural land must pay the following penalties and costs:

(a) Collection of the value of the products illegally used or removed plus a penalty of double their values;

(b) Costs associated with any damage to Indian agricultural land and/or property;

(c) The costs associated with enforcement of the regulations, including field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs, and attorney fees;

(d) Expenses incurred in gathering, impounding, caring for, and disposal of livestock in cases which necessitate impoundment under § 166.807 of this subpart; and

(e) All other penalties authorized by law.

§ 166.813 How will the BIA determine the value of forage or crops consumed or destroyed?

We will determine the value of forage or crops consumed or destroyed based upon the average rate received per month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of such products or property.

§ 166.814 How will the BIA determine the value of the products or property illegally used or removed?

We will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

§ 166.815 How will the BIA determine the amount of damages to Indian agricultural land?

We will determine the damages by considering the costs of rehabilitation and revegetation, loss of future revenue, loss of profits, loss of productivity, loss of market value, damage to other resources, and other factors.

§ 166.816 How will the BIA determine the costs associated with enforcement of the trespass?

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

§ 166.817 What happens if I do not pay the assessed penalties, damages and costs?

Unless otherwise provided by applicable tribal law:

(a) We will refuse to issue you a permit for use, development, or occupancy of Indian agricultural lands; and

(b) We will forward your case for appropriate legal action.

§ 166.818 How are the proceeds from trespass distributed?

Unless otherwise provided by tribal law:

(a) We will treat any amounts recovered under § 166.812 of this subpart as proceeds from the sale of agricultural property from the Indian agricultural land upon which the trespass occurred.

(b) Proceeds recovered under § 166.812 of this subpart may be distributed to:

(1) Repair damages of the Indian agricultural land and property;

(2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit; and

(3) Reimburse for costs associated with the enforcement of this subpart.

(c) If any money is left over after the distribution of the proceeds described in paragraph (b) of this section, we will return it to the trespasser or, where we cannot identify the owner of the impounded property within 180 days, we will deposit the net proceeds of the sale into the accounts of the landowners where the trespass occurred.

§ 166.819 What happens if the BIA does not collect enough money to satisfy the penalty?

We will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within five business days from the date of receipt, we will forward the case for appropriate legal action. We may send a copy of the notice to the Indian landowner, permittee, and any known lien holders.

Subpart J—Agriculture Education, Education Assistance, Recruitment, and Training

§ 166.900 How are the Indian agriculture education programs operated?

(a) The purpose of the Indian agriculture education programs is to recruit and develop promising Indian and Alaska Natives who are enrolled in secondary schools, tribal or Alaska Native community colleges, and other post-secondary schools for employment as professional resource managers and other agriculture-related professionals by approved organizations.

(b) We will operate the student educational employment program as part of our Indian agriculture education programs in accordance with the provisions of 5 CFR 213.3202(a) and (b).

(c) We will establish an education committee to coordinate and carry out the agriculture education assistance programs and to select participants for all agriculture education assistance programs. The committee will include at least one Indian professional educator in the field of natural resources or agriculture, a personnel specialist, a representative of the Intertribal Agriculture Council, and a natural resources or agriculture professional

from the BIA and a representative from American Indian Higher Education Consortium. The committee's duties will include the writing of a manual for the Indian and Alaska Native Agriculture Education and Assistance Programs.

(d) We will monitor and evaluate the agriculture education assistance programs to ensure that there are adequate Indian and Alaska Native natural resources and agriculture-related professionals to manage Indian natural resources and agriculture programs by or for tribes and Alaska Native Corporations. We will identify the number of participants in the intern, student educational employment program, scholarship, and outreach programs; the number of participants who completed the requirements to become a natural resources or agriculture-related professional; and the number of participants completing advanced degree requirements.

§ 166.901 How will the BIA select an agriculture intern?

(a) The purpose of the agriculture intern program is to ensure the future participation of trained, professional Indians and Alaska Natives in the management of Indian and Alaska Native agricultural land. In keeping with this purpose, we will work with tribes and Alaska Natives:

(1) To obtain the maximum degree of participation from Indians and Alaska Natives in the agriculture intern program;

(2) To encourage agriculture interns to complete an undergraduate degree program in natural resources or agriculture-related field; and

(3) To create an opportunity for the advancement of natural resources and agriculture-related technicians to professional resource management positions with the BIA, other federal agencies providing an agriculture service to their respective tribe, a tribe, or tribal agriculture enterprise.

(b) Subject to restrictions imposed by agency budgets, we will establish and maintain in the BIA at least 20 positions for the agriculture intern program. All Indians and Alaska Natives who satisfy the qualification criteria may compete for positions.

(c) Applicants for intern positions must meet the following criteria:

(1) Be eligible for Indian preference as defined in 25 CFR part 5;

(2) Possess a high school diploma or its recognized equivalent;

(3) Be able to successfully complete the intern program within a three-year period; and

(4) Possess a letter of acceptance to an accredited post-secondary school or demonstrate that one will be sent within 90 days.

(d) We will advertise vacancies for agriculture intern positions semi-annually, no later than the first day of April and October, to accommodate entry into school.

(e) In selecting agriculture interns, we will seek to identify candidates who:

(1) Have the greatest potential for success in the program;

(2) Will take the shortest time period to complete the intern program; and

(3) Provide the letter of acceptance required by paragraph (c)(4) of this section.

(f) Agriculture interns must:

(1) Maintain full-time status in an agriculture-related curriculum at an accredited post-secondary school;

(2) Maintain good academic standing;

(3) Enter into an obligated service agreement to serve as a professional resource manager or agriculture-related professional with an approved organization for one year in exchange for each year in the program; and

(4) Report for service with the approved organization during any break in attendance at school of more than three weeks.

(g) The education committee will evaluate annually the performance of the agriculture intern program participants against requirements to ensure that they are satisfactorily progressing toward completion of program requirements.

(h) We will pay all costs for tuition, books, fees, and living expenses incurred by an agriculture intern while attending an accredited post-secondary school.

§ 166.902 How can I become an agriculture educational employment student?

(a) To be considered for selection, applicants for the student educational employment program must:

(1) Meet the eligibility requirements in 5 CFR part 308; and

(2) Be accepted into or enrolled in a course of study at an accredited post-secondary institution which grants degrees in natural resources or agriculture-related curricula.

(b) Student educational employment steering committees established at the field level will select program participants based on eligibility requirements without regard to applicants' financial needs.

(c) A recipient of assistance under the student educational employment program will be required to enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for one year in exchange for each year in the program.

(d) We will pay all costs of tuition, books, fees, and transportation to and from the job site to school, for an Indian or Alaska Native student who is selected for the cooperative education program.

§ 166.903 How can I get an agriculture scholarship?

(a) We may grant agriculture scholarships to Indians and Alaska Natives enrolled as full-time students in accredited post-secondary and graduate programs of study in natural resources and agriculture-related curricula.

(b) The education committee established in § 166.900(c) of this subpart will select program participants based on eligibility requirements stipulated in paragraphs (e) through (g) of this section without regard to applicants' financial needs or past scholastic achievements.

(c) Recipients of scholarships must reapply annually to continue to receive funding beyond the initial award period. Students who have received scholarships in past years, are in good academic standing, and have been recommended for continuation by their academic institution will be given priority over new applicants for scholarship assistance.

(d) The amount of scholarship funds an individual is awarded each year will be contingent upon the availability of funds appropriated each fiscal year and is subject to yearly change.

(e) Preparatory scholarships may be available for a maximum of three academic years of general, undergraduate course work leading to a degree in natural resources or agriculture-related curricula and may be awarded to individuals who:

(1) Possess a high school diploma or its recognized equivalent; and

(2) Are enrolled and in good academic standing at an acceptable post-secondary school.

(f) Undergraduate scholarships are available for a maximum of three academic years and may be awarded to individuals who:

(1) Have completed a minimum of 55 semester hours toward a bachelor's degree in a natural resources or agriculture-related curriculum; and

(2) Have been accepted into a natural resource or agriculture-related degree-granting program at an accredited college or university.

(g) Graduate scholarships are available for a maximum of five academic years for individuals selected into the graduate program of an accredited college or university that

grants advanced degrees in natural resources or agriculture-related fields.

(h) A recipient of assistance under the scholarship program must enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with the BIA, other federal agency providing assistance to their respective tribe, a tribe, tribal agriculture enterprise, or an ANCSA Corporation for one year for each year in the program.

(i) We will pay all scholarships approved by the education committee established in § 166.900 of this subpart for which funding is available.

§ 166.904 What is agriculture education outreach?

(a) We will establish and maintain an agriculture education outreach program for Indian and Alaska Native youth that will:

(1) Encourage students to acquire academic skills needed to succeed in post-secondary mathematics and science courses;

(2) Promote agriculture career awareness;

(3) Involve students in projects and activities oriented to agriculture related professions early so students realize the need to complete required pre-college courses; and

(4) Integrate Indian and Alaska Native agriculture program activities into the education of Indian and Alaska Native students.

(b) We will develop and carry out the program in consultation with appropriate community education organizations, tribes, ANCSA Corporations, Alaska Native organizations, and other federal agencies providing agriculture services to Indians.

(c) The education committee established under § 166.900(c) of this subpart will coordinate and implement the program nationally.

§ 166.905 Who can get assistance for postgraduate studies?

(a) The purpose of the postgraduate studies program is to enhance the professional and technical knowledge of Indian and Alaska Native natural resource and agriculture-related professionals working for an approved organization so that the best possible service is provided to Indian and Alaska Natives.

(b) We may pay the cost of tuition, fees, books, and salary of Alaska Natives and Indians who are employed by an approved organization and who wish to pursue advanced levels of education in natural resource or agriculture-related fields.

(c) The goal of the advanced study program is to encourage participants to obtain additional academic credentials such as a degree or diploma in a natural resources or agriculture-related field. Requirements of the postgraduate study program are:

(1) The duration of course work cannot be less than one semester or more than three years; and

(2) Students in the postgraduate studies program must meet performance standards as required by the graduate school offering the study program.

(d) Program applicants must submit application packages to the education committee. At a minimum, such packages must contain a resume and an endorsement signed by the applicant's supervisor clearly stating the need for and benefits of the desired training.

(e) The education committee must use the following criteria to select participants:

(1) Need for the expertise sought at both the local and national levels;

(2) Expected benefits, both locally and nationally; and

(3) Years of experience and the service record of the employee.

(f) Program participants will enter into an obligated service agreement to serve as a natural resources or agriculture-related professional with an approved organization for one year for each year in the program. We may reduce the obligated service requirement if the employee receives supplemental funding such as research grants, scholarships, or graduate stipends and, as a result, reduces the need for financial assistance under this part. If the obligated service agreement is breached, we will collect the amount owed us in accordance with § 166.910 of this subpart.

§ 166.906 What can happen if we recruit you after graduation?

(a) The purpose of the post graduation recruitment program is to recruit Indian and Alaska Native natural resource and trained agriculture technicians into the agriculture programs of approved organizations.

(b) We may assume outstanding student loans from established lending institutions of Indian and Alaska Native natural resources and agriculture technicians who have successfully completed a post-secondary natural resources or agriculture-related curriculum at an accredited institution.

(c) Indian and Alaska Natives receiving benefits under this program will enter into an obligated service agreement in accordance with § 166.901 of this subpart. Obligated service required under this program will be one year for every $5,000 of student loan debt repaid.

(d) If the obligated service agreement is breached, we will collect student loan(s) in accordance with § 166.910 of this subpart.

§ 166.907 Who can be an intern?

(a) Natural resources or agriculture personnel working for an approved organization may apply for an internship within agriculture-related programs of agencies of the Department of the Interior or other federal agencies providing an agriculture service to their respective reservations.

(b) Natural resources or agriculture-related personnel from other Department of the Interior agencies may apply through proper channels for ''internships'' within the BIA's agriculture programs. With the consent of a tribe or Alaska Native organization, the BIA can arrange for an Intergovernmental Personnel Act assignment in tribal or Alaska Native agriculture programs.

(c) Natural resources and agriculture personnel from agencies not within the Department of the Interior may apply, through proper agency channels and pursuant to an interagency agreement, for an ''internship'' within the BIA and, with the consent of a tribe or Alaska Native organization, we can facilitate an Intergovernmental Personnel Act assignment in a tribe, tribal agriculture enterprise, or Alaska Native Corporation.

(d) Natural resources or agriculture personnel from a tribe, tribal agriculture enterprise, or Alaska Native Corporation may apply, through proper channels and pursuant to a cooperative agreement, for an internship within another tribe, tribal forest enterprise, or ANCSA Corporation agriculture program.

(e) The employing agency of participating federal employees will provide for the continuation of salary and benefits.

(f) The host agency for participating tribal, tribal agriculture enterprise, or Alaska Native Corporation agriculture employees will provide for salaries and benefits.

(g) A bonus pay incentive, up to 25 percent (%) of the intern's base salary, may be provided to intergovernmental interns at the conclusion of the internship period. Bonus pay incentives will be at the discretion of and funded by the host organization and must be conditioned upon the host agency's documentation of the intern's superior performance, in accordance with the agency's performance standards, during the internship period.

§ 166.908 Who can participate in continuing education and training?

(a) The purpose of continuing education and training is to establish a program to provide for the ongoing education and training of natural resources and agriculture personnel employed by approved organizations. This program will emphasize continuing education and training in three areas:

(1) Orientation training including tribal-federal relations and responsibilities;

(2) Technical agriculture education; and

(3) Developmental training in agriculture-based enterprises and marketing.

(b) We will maintain an orientation program to increase awareness and understanding of Indian culture and its effect on natural resources management and agriculture practices and on federal laws that effect natural resources management and agriculture operations and administration in the Indian agriculture program.

(c) We will maintain a continuing technical natural resources and agriculture education program to assist natural resources managers and agriculture-related professionals to perform natural resources and agriculture management on Indian land.

(d) We will maintain an agriculture land-based enterprise and marketing training program to assist with the development and use of Indian and Alaska Native agriculture resources.

§ 166.909 What are my obligations to the BIA after I participate in an agriculture education program?

(a) Individuals completing agriculture education programs with an obligated service requirement may be offered full time permanent employment with an approved organization to fulfill their obligated service within 90 days of the date all program education requirements have been completed. If employment is not offered within the 90-day period, the student will be relieved of obligated service requirements. Not less than 30 days before the start of employment, the employer must notify the participant of the work assignment, its location and the date work must begin. If the employer is other than the BIA, the employer must also notify us.

(b) Employment time that can be credited toward obligated service requirement will begin the day after all program education requirements have been completed, with the exception of the agriculture intern program which includes the special provisions outlined in § 166.901(f)(4) of this subpart. The minimum service obligation period will be one year of full time employment.

(c) The employer has the right to designate the location of employment for fulfilling the service obligation.

(d) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a deferment of obligated service to pursue postgraduate or post-doctoral studies. In such cases, we will issue a decision within 30 days of receipt of the request for deferral. We may grant such a request; however, deferments granted in no way waive or otherwise affect obligated service requirements.

(e) A participant in any of the agriculture education programs with an obligated service requirement may, within 30 days of completing all program education requirements, request a waiver of obligated service based on personal or family hardship. We may grant a full or partial waiver or deny the request for wavier. In such cases, we will issue a decision within 30 days of receiving the request for waiver.

§ 166.910 What happens if I do not fulfill my obligation to the BIA?

(a) Any individual who accepts financial support under agriculture education programs with an obligated service requirement, and who does not accept employment or unreasonably terminates employment must repay us in accordance with the following table:

If you are...	Then the costs that you must repay are...	And then the costs that you do not need to repay are...
(1) Agriculture intern	Living allowance, tuition, books, and fees received while occupying position plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.
(2) Cooperative education ...	Tuition, books, and fees plus interest.	
(3) Scholarship	Costs of scholarship plus interest.	
(4)Post graduation recruitment.	All student loans assumed by us under the program plus interest.	
(5) Postgraduate studies	Living allowance, tuition, books, and fees received while in the program plus interest.	Salary paid during school breaks or when recipient was employed by an approved organization.

(b) For agriculture education programs with an obligated service requirement, we will adjust the amount required for repayment by crediting toward the final amount of debt any obligated service performed before breach of contract.

Subpart K—Records

§ 166.1000 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under 25 U.S.C. § 450f *et seq.*, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§ 166.1001 How must a records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have records identified in § 166.1000(a) of this part must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 166.1000(b) of this part for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal

organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

Dated: December 21, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 01–1419 Filed 1–19–01; 8:45 am]

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Part X

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 441 and 483

Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 441 and 483

[HCFA–2065–IFC]

RIN 0938–AJ96

Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period establishes a definition of a ''psychiatric residential treatment facility'' that is not a hospital and that may furnish covered Medicaid inpatient psychiatric services for individuals under age 21. This rule also sets forth a Condition of Participation (CoP) that psychiatric residential treatment facilities that are not hospitals must meet to provide, or to continue to provide, the Medicaid inpatient psychiatric services benefit to individuals under age 21. Specifically, this rule establishes standards for the use of restraint or seclusion that psychiatric residential treatment facilities must have in place to protect the health and safety of residents. This CoP acknowledges a resident's right to be free from restraint or seclusion except in emergency safety situations. We are requiring psychiatric residential treatment facilities to notify a resident (and, in the case of a minor, his or her parent(s) or legal guardian(s)) of the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that occurs while the resident is in the program. We believe these added requirements will protect residents against the inappropriate use of restraint or seclusion.

DATES: *Effective date:* These regulations are effective on March 23, 2001.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 23, 2001.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2065–IFC, P.O. Box 8010, Baltimore, MD 21244–8010.

If you prefer, you may deliver your written comments (one original and three copies) by courier to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or C5–15–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to those addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2065–IFC.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Julie Brown, HCFA–2065–IFC.

FOR FURTHER INFORMATION CONTACT: Mary Kay Mullen, (410)786–5480.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(9)(A) of the Social Security Act (the Act) requires the State health agency or other State medical agency to establish and maintain health standards for private and public institutions in which recipients of medical assistance, under the State plan, may receive care or services. Section 1905(h) of the Act defines the term ''inpatient psychiatric hospital services for individuals under age 21'' as inpatient services that are provided in an institution (or distinct part thereof) that is a psychiatric hospital or in another inpatient setting that the Secretary has specified in regulations. In this interim final rule, we are defining psychiatric residential treatment facilities as an inpatient setting in conformity with the definition of an institution as set forth in section 1905(h).

The Medicaid program makes Federal funding available for State expenditures under an approved State Medicaid plan for inpatient psychiatric services for eligible individuals under 21 years of age in hospital and nonhospital settings. Nonhospital settings, which we are defining as psychiatric residential treatment facilities (facilities), are rapidly replacing hospitals in treating children and adolescents with psychiatric disorders. These facilities are generally a less restrictive alternative to a hospital for treating children and adolescents whose illnesses are less acute but who still require a residential environment.

On November 17, 1994, we published in the **Federal Register** (56 FR 59624) proposed regulations to establish standards for nonhospital psychiatric residential treatment facilities, to be contained in a new subpart F of 42 CFR part 483. Among the proposed standards was a prohibition on physical restraints and psychoactive drugs for purposes of discipline or convenience, when not required to treat the resident's psychiatric symptoms, or when not specified in the plan of treatment. Also included was a prohibition on the use of involuntary seclusion. Moreover, limitations were proposed on the use of drugs in doses that would interfere with the resident's daily living activities, or the use of drugs to control inappropriate behavior. These drugs would not be used unless they were an integral part of a plan of care directed specifically toward reducing and eventually eliminating that behavior, or when the harmful effects of the behavior clearly outweighed the potential harmful effects of the drugs.

We, as well as the Congress, have grown increasingly concerned about the danger posed to residents in psychiatric residential treatment facilities as a result of improper restraint and seclusion practices. Improper restraint and seclusion practices can lead to serious injury and even death of residents as well as staff. In March 1999, during the first session of the 106th Congress, members of the Senate and House of Representatives introduced three separate bills (S. 736, S. 750 and H.R. 1313) intended to protect individuals from the improper use of restraint or seclusion in Medicare and Medicaid-funded facilities. These bills were incorporated into the enactment of the Children's Health Act of 2000, which was signed by the President on October 17, 2000.

Advocates for persons with mental illness as well as the media have raised the public's awareness of restraint and seclusion practices that can lead to serious injury and death. The *Hartford Courant* (*Courant*), a Connecticut newspaper, published a series of articles in October 1998 citing the results of a

50-state survey that confirmed 142 deaths, that occurred during the previous decade, while or shortly after a patient was restrained or secluded. The first of a series of articles entitled ''A Nationwide Pattern of Death,'' was published October 11, 1998. The survey focused on mental health and mental retardation facilities and group homes nationwide. According to a statistical estimate commissioned by the *Courant* that was conducted by the Harvard Center for Risk Analysis, between 50 and 150 deaths related to the use of restraint or seclusion occur every year across the country. The article further stated that of the 142 restraint-related deaths confirmed by the *Courant's* investigation, ages could be confirmed in 114 cases, and that more than 26 percent of those were children—nearly twice the proportion they represent in mental health institutions.

In 1999, at the request of the Congress, the General Accounting Office (GAO) conducted a study that focused on individuals receiving services in mental health and mental retardation facilities and group homes nationwide that receive public funding, primarily from the Medicare and Medicaid programs. Some objectives of the study were to determine the dangers of restraint and seclusion, the extent to which restraint and seclusion are used in inpatient and residential treatment facilities for individuals with mental illness or mental retardation, and the number of related injuries and deaths from their use. To gain at least a partial indication of the scope of the problem, the GAO obtained data on the number of deaths related to restraint or seclusion investigated by the Protection and Advocacy agencies in all 50 states and the District of Columbia in fiscal year 1998. On the basis of the partial information available from the 51 agencies, the GAO identified 24 deaths associated with restraint or seclusion during fiscal year 1998.

In September of 1999, the GAO issued a report titled ''Improper Restraint or Seclusion Use Places People at Risk'' (GAO/HEHS–99–176), which concluded that the improper use of restraint and seclusion can be dangerous to both people receiving treatment and to staff. The report stated that the full extent of related injuries and deaths from improper restraint or seclusion is unknown because there is no comprehensive reporting system to track injuries and deaths, or to track the rates of restraint or seclusion use by facility. In addition, according to the report, most facilities are not even required to report these data to oversight agencies. The report stated that because reporting is so fragmentary, there may be many more deaths related to the use of restraint or seclusion than are being reported.

The *Courant* series and the GAO report underscore our concern for the safety and welfare of children and adolescents when restraints or seclusion are employed in residential treatment facilities. We have therefore developed standards that describe the conditions under which restraint or seclusion can be used; that set an upper limit on the permissible length of time for each instance of restraint or seclusion use; that require education and training of staff, including the safe use of restraint and the safe use of seclusion; that require staff to directly monitor residents who are restrained or secluded for the entire duration of the procedure; and that prohibit the simultaneous use of restraints and seclusion.

On July 2, 1999, we published in the **Federal Register** an interim final rule that addressed, in part, the use of restraint and seclusion in hospitals, including psychiatric hospitals, entitled ''Medicare and Medicaid Programs; Hospital Conditions of Participation; Patients' Rights'' (64 FR 36070). We conducted substantial academic research on the issue of restraint and seclusion, which was discussed in the referenced hospital interim final rule. Although the research primarily involved elderly patients, its findings, we believe, are also relevant to individuals under age 21. As we said there: ''Research indicates that the potential for injury or harm with the use of restraint is a reality. In a 1989 article published in the *Journal of the American Geriatrics Society,* Evans and Strumpf pointed to an association between the use of physical restraint and death during hospitalization (Evens, LK and Strumpf, NE: Tying down the elderly: A review of the literature on physical restraint. J Am Geriatr Soc (1989) 37:65–74; also see Robbins, LJ, Boyko E, Lane, J, et al.: Binding the elderly: A prospective study of the use of mechanical restraint in an acute care hospital. J Am Geriatr Soc (1987) 35:290; Frengley, JD and Mion, LC: Incidence of physical restraints on acute general medical wards. J Am Geriatr Soc (1986) 34:565; Strumpf, NE and Evans, LK: Physical restraint of the hospitalized elderly: Perceptions of patients and nurses. Nursing Research (1998) 37:132.) The FDA estimates that at least 100 deaths from the improper use of restraints may occur annually. Mion et al. further noted that 'Some evidence exists that the use of physical restraints is not a benign practice and is associated with adverse effects, such as longer length of hospitalization, higher mortality rates, higher rates of complications, and negative patient reactions. Physical restraints have a detrimental effect on the psychosocial well-being of the patient' (see Mion et al.: A further exploration of the use of physical restraints in hospitalized patients. J Am Geriatr Soc (1989) 37:955; Schafer, A: Restraints and the elderly: When safety and autonomy conflict. Can Med Assoc J (1985) 132:1257–1260.)''

''Research findings on the impact of restraints use have lead to research on and development of alternative methods for handling the behaviors and symptoms that historically prompted the application of restraint. However, various studies provide evidence that restraint is still being used when alternate solutions are available (see Donat, DC: Impact of a mandatory behavior consultation on seclusion/restraint utilization in psychiatric hospitals. J Behav Ther Exp Psychiatry (1998 March) 29:1, 13–9; Dunbar, J: Making restraint-free care work. Provider (1997 May) 75–76, 79; and Moss RJ: Ethics of mechanical restraints. Hasting Center Report (1991 Jan–Feb) 21 (1):22–25.)''

In the preamble of the July 1999 hospital interim final rule, we asked for comments on whether we should apply the hospital behavioral health standards on the use of restraint and seclusion to psychiatric residential treatment facilities that provide inpatient psychiatric services to individuals under age 21, or whether more stringent standards were warranted. Consumer advocacy groups that commented on extending the restraint and seclusion requirements to other types of providers and settings generally agreed that more stringent regulations should be applied with respect to the treatment of children. Their opinion was that the restraint of children and adolescents in these settings presents special hazards and concerns. Those comments will be addressed more specifically in the hospital final rule. Additionally, the 1999 GAO report described a study sponsored by the Center for Mental Health Services which indicated that there are higher restraint rates for children, including one State in which children in State-run facilities were restrained four times more frequently than adults. This report also noted that children are smaller and weaker than adults, so staff who are used to overpower adults may apply too much preasure or force when restraining children. For all of these reasons, HCFA has included standards in this rule that provide greater protection than those in

existence or required by the Children's Health Act of 2000.

Generally, the requirements set forth in this rule governing the use of restraint and seclusion are consistent with both the November 1994 proposed rule and the July 1999 hospital interim final rule. Moreover, this rule also meets the specific requirements of section 3207 of the Children's Health Act of 2000 (Pub. L. 106–310) which requires that health care facilities receiving support in any form from any program supported in whole or in part with funds appropriated to any Federal department or agency shall protect and promote the rights of each resident of the facility, including the right to be free from any restraints or involuntary seclusion imposed for purposes of discipline or convenience. Specifically, section 591(c) of the Children's Health Act permits the Secretary to issue regulations that afford residents greater protections regarding restraint and seclusion than the standards published in the new law. Consistent with this section, this rule provides greater protections than those required in section 3207.

Psychiatric residential treatment facilities are fast replacing hospitals in providing long-term mental health services to children and adolescents, a highly vulnerable population. The dangers associated with the inappropriate use of restraint and seclusion, especially with this population were well documented in the GAO Report and the *Courant* series. According to the GAO Report, children are subjected to restraint and seclusion at higher rates than adults and are at greater risk of injury. Based on the mounting evidence of harm that can result from the use of restraint and seclusion, we are being more prescriptive in the way our restraint and seclusion standards are applied in psychiatric residential treatment facilities.

II. Provisions of the Interim Final Rule

Effect of This Rule on the Survey and Certification Requirements

This interim final rule implements only one of the conditions of participation (CoPs) set forth in our November 1994 proposed rule. We are not implementing the remainder of the CoPs in that proposed rule at this time because many of the comments we received on that proposed rule are still under evaluation. We plan to address the remainder of the CoPs in our November 1994 proposed rule in a separate rule in the future. As discussed below, we are moving forward with this CoP because evidence indicates a pressing need for the promulgation and enforcement of restraint and seclusion rules for psychiatric residential treatment facilities.

Requiring psychiatric residential treatment facilities to meet these CoPs will require us to develop additional survey protocols and implementing guidelines to enforce these new requirements. We will solicit public comment on these survey protocols. Until such protocols are issued, we are requiring each psychiatric residential treatment facility that provides inpatient psychiatric services to individuals under age 21 under a State plan to attest, in writing, that the facility is in compliance with the standards set forth in this rule governing the use of restraint and seclusion. This attestation must be signed by the facility director. In addition, we are requiring the facility to provide the State Medicaid agency with its attestation of compliance. Since the facility will need time to implement these restraint and seclusion standards before it can come into compliance, we are allowing the facility 120 days from the effective date of this interim final rule to provide the State Medicaid agency with its attestation of compliance.

We will work with the States to develop a process for sampling psychiatric residential treatment facilities to validate their attestations of compliance with the restraint and seclusion standards.

This interim final rule establishes a definition of a psychiatric residential treatment facility as a facility other than a hospital that provides inpatient psychiatric services and sets forth a CoP entitled ''Use of Restraint or Seclusion in Psychiatric Residential Treatment Facilities Providing Inpatient Psychiatric Services for Individuals Under Age 21.'' This CoP is in addition to the existing regulatory requirements for these facilities in 42 CFR 441.151 through 441.182, which specify requirements applicable if a State plan provides for inpatient psychiatric services to individuals under age 21.

Section 441.151 General Requirements

This regulation amends § 441.151 by redesignating existing paragraphs, by adding explicit reference to residential treatment facilities, and by adding a new paragraph (b) to establish a CoP in part 483, subpart G, that facilities must meet in order to provide these services.

Section 483.352 Definitions

We have included in this section, definitions of terms as they apply to the standards in this rule governing the use of restraint and seclusion in psychiatric residential treatment facilities.

The definitions we have employed for ''mechanical restraint'' and ''personal restraint'' in this rule are modeled on the hospital definition of ''restraint'' codified in § 482.13(f)(1). In this rule, we distinguish between ''personal'' and ''mechanical'' restraint to clarify that mechanical restraint means any device attached or adjacent to a person's body, while personal restraint means the application of physical force on a person's body without the use of any device.

Section 483.354 General Requirements for Psychiatric Residential Treatment Facilities

This section clarifies that in addition to the requirements specified in this rule, psychiatric residential treatment facilities must meet the requirements in §§ 441.151 through 441.182 of this chapter.

Section 483.356 Protection of Residents

The purpose of this CoP is to protect residents in psychiatric residential treatment facilities from the inappropriate use of restraint or seclusion by addressing the right of each resident to be free from restraint or seclusion, in any form, imposed as a means of coercion, discipline, convenience, or retaliation.

An example of the inappropriate use of seclusion or restraint for purposes of coercion would be the use of seclusion or restraint with a resident whose behavior would not require its use, and who is not endangering others, but where seclusion or restraint is being used until the resident takes prescribed medications or attends a required group therapy session. We are seeking public comment on the use of the term coercion.

The CoP provides for the use of restraint or seclusion only in emergency safety situations to ensure the safety of the resident or others, and only until the emergency safety situation ends. An order for restraint or seclusion cannot be issued as a standing order. We also are prohibiting the simultaneous use of restraint and seclusion in psychiatric residential treatment facilities. Combining a mechanical restraint intervention with isolation (seclusion) is extremely restrictive and dangerous.

In § 483.356(c) we are requiring each facility to inform both the resident and, in the case of a minor, his or her parent(s) or legal guardian(s) of its policy regarding the use of restraint or seclusion. To comply with Executive Order 13166 (Improving Access to

Services for Persons with Limited English Proficiency) which was issued on August 11, 2000, each facility is required to communicate its restraint and seclusion policy in a language that the resident, or his or her parent(s) or legal guardian(s) understands (including American Sign Language, if appropriate) and that, when necessary, interpreters or translators are provided. We believe that the resident (and, in the case of a minor, the parent(s) or legal guardian(s)) must be informed of the facility's restraint and seclusion policy at the time of admission to foster the selection of a provider best suited to meet the physical and mental health needs of the resident. We are also requiring the facility to provide a copy of the facility's policy to the resident, and if a minor, a copy to both the resident and the resident's parent(s) or legal guardian(s). The facility's policy must provide the information needed for contacting the State Protection and Advocacy Organization.

Section 483.358 Orders for the Use of Restraint or Seclusion

Under this new standard, restraint or seclusion may be imposed only in emergency safety situations.

This standard provides that only a board-certified psychiatrist, or a licensed physician with specialized training and experience in diagnosing and treating mental disorders, may order restraint or seclusion in emergency safety situations. This person must be the resident's treatment team physician, if available. When he or she is not available, the physician covering for the treatment team physician may order restraint or seclusion. The covering physician must meet these same requirements for training and experience.

We are limiting the authority to order the use of restraint and seclusion in psychiatric residential treatment facilities to a board-certified psychiatrist or a licensed physician with specialized training and experience in diagnosing and treating mental disorders. Our requirement that only a board-certified psychiatrist or a licensed physician may order restraint or seclusion is consistent with existing physician admission and certification of need for services requirements applicable if a State provides inpatient psychiatric services to individuals under age 21 in psychiatric facilities. Regulatory requirements at 42 CFR part 441, subpart D and part 456, subpart D require that inpatient psychiatric services for individuals under age 21 be provided under the direction of a physician, and that a physician must certify, in writing, that inpatient psychiatric services are necessary in the setting in which they will be provided.

Any order for restraint or seclusion must be the least restrictive intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff and must be limited to no longer than the duration of the emergency safety situation. If the physician is not present in the facility to order the use of restraint or seclusion, we are requiring in § 483.358(d) that a registered nurse obtain the physician's verbal order at the time the emergency safety intervention is initiated by staff. The physician's verbal order must be followed with the physician's signature verifying the verbal order. The ordering physician must be available to staff at least by phone for the duration of the restraint or seclusion to ensure the resident's safety.

The time limits for restraint or seclusion orders in this rule are consistent with the July 1999 hospital interim final rule: no more than 4 hours for residents ages 18 to 21, 2 hours for residents ages 9 to 17, and 1 hour for residents under age 9. We are soliciting comments on these time limits.

In § 483.358, we are also requiring that within 1 hour of the initiation of an emergency safety intervention, a face-to-face assessment of the physical and psychological well-being of the resident be conducted. We believe this assessment is necessary to ensure the safety of the resident during and immediately after he or she is restrained or secluded. We believe that requiring that this assessment be performed by a physician would be unrealistic because unlike hospitals, a psychiatric residential treatment facility may not have a physician present 24 hours a day. Therefore, when a physician is not present, we are allowing a clinically qualified registered nurse trained in the use of emergency safety interventions to perform the face-to-face assessment. Both the face-to-face assessment and the restraint or seclusion order must be documented in the resident's record by staff involved in the emergency safety intervention before the end of their shifts. The ordering physician must sign the order as soon as possible.

Section 483.360 Consultation With Treatment Team Physician

If the physician who orders the use of restraint or seclusion is not part of the resident's treatment team, the facility must consult with the resident's treatment team physician as soon as possible. We believe it is important that the team physician be made aware of any circumstances that have disrupted the physical or psychological well-being of the resident as soon as possible so that the team physician can evaluate the situation(s) that required the resident to be restrained or secluded and make appropriate modifications to the resident's plan of treatment. We are requiring documentation in the resident's record that the treatment team physician was contacted.

Section 483.362 Monitoring of the Resident in and Immediately After Restraint

We are requiring that clinical staff trained in the use of emergency safety interventions be physically present, continually assessing and monitoring the resident in restraint. If the emergency safety situation continues beyond the time limits of the order, a registered nurse must immediately contact the ordering physician in order to receive further instructions. A physician or registered nurse must evaluate the resident immediately after the restraint is removed. We believe these requirements will futher ensure resident safety.

Section 483.364 Monitoring of the Resident in and Immediately After Seclusion

We are requiring a resident in seclusion to be continually monitored and assessed by clinical staff, trained in the use of emergency safety interventions and that the staff monitoring the resident must be physically present in or immediately outside the seclusion room to ensure the safety of the resident. Video monitoring of the resident in seclusion will not meet this requirement because such monitoring cannot determine if a resident is experiencing a medical emergency such as cardiac arrest or asphyxiation.

This standard also specifies the characteristics of a room used for seclusion, including the requirements that the interior of the seclusion room be fully visible to staff and be free of any potentially hazardous conditions. We also are requiring that a physician or registered nurse evaluate the resident immediately after the resident is removed from seclusion. As stated in the discussion of § 483.262, we believe these requirements will ensure resident safety.

Section 483.366 Notification of Parent(s) or Legal Guardian(s)

We are requiring the facility to notify the parent(s) or legal guardian(s) whenever a resident who is a minor (as defined in this subpart) is restrained or

secluded. Notification must be made as soon as possible after the initiation of each emergency safety intervention and must be documented in the resident's record.

Section 483.368 Application of Time Out

We have defined ''time out'' in § 483.352 ''Definitions'' to clarify that it is not a form of seclusion, because the resident in time out is not physically prevented from leaving the time out area. The regulation also clarifies that time out can take place away from other residents (exclusionary) or in the area of activity or in the presence of other residents (inclusionary). This section further requires staff to monitor the resident while he or she is in time out. We considered establishing time limits for time out, but because age, maturity level, health status, and other factors must be considered, we believe that the duration of time out should be based on professional judgement. We welcome comments on this issue.

Section 483.370 Postintervention Debriefings

In order to ensure the safety of resident's and others, we believe it is critical that the facility begin to quickly assess the circumstances that warranted the use of restraint or seclusion and to identify alternatives to reduce or eliminate their use. Therefore, we are requiring that within 24 hours after a resident has been restrained or secluded, staff involved in the emergency safety intervention and the resident, participate in a face-to-face discussion. This discussion can also include other staff and the resident's parent(s) or legal guardian(s) when it is deemed appropriate by the facility. As stated earlier, the facility must ensure that such discussions are conducted in a language that is understood by the resident and the resident's parent(s) or legal guardian(s). The discussion will provide both the resident and staff involved an opportunity to discuss the circumstances that resulted in the use of restraint or seclusion and strategies that all parties could employ to prevent the need for restraint or seclusion. However, we recognize that there may be clinical reasons why it may not be appropriate for a particular staff person involved in the emergency safety intervention to be part of the debriefing. If the presence of a particular staff person jeopardizes the well-being of the resident, it may not be advisable to include that staff person in a debriefing session. Therefore, this rule provides an exception to the requirement for those situations when the presence of a particular staff person jeopardizes the well-being of the resident.

We also are requiring a separate debriefing of staff involved in the emergency safety intervention, and a review by appropriate supervisory and administrative staff of the situation that required the use of restraint or seclusion. However, we are not requiring that this debriefing be face-to-face.

We believe staff debriefings may identify areas requiring modification of administrative policy and procedures pertaining to the use of restraint or seclusion, and may serve to reduce use of restraint or seclusion. We believe the debriefing is critical to ensuring the safety of the resident and others and should take place within 24 hours after the use of restraint or seclusion. We are specifically requesting comments regarding the 24 hour requirement for debriefings involving staff and a resident, as well as debriefings between staff involved in an intervention and appropriate administrative and supervisory staff.

Section 483.372 Medical Treatment for Injuries Resulting from an Emergency Safety Intervention

This standard requires qualified medical personnel to immediately provide medical treatment to a resident who is injured during restraint or seclusion and to document these injuries in the resident's record. Injuries sustained by staff during the restraint or seclusion of a resident must also be documented in the resident's record. We believe this information will be important in assisting the facility in identifying measures to improve the safety of its staff through modifications of existing policies and procedures in the safe use of restraint and seclusion, and modificaion of training programs. We are also requiring staff involved in an emergency safety intervention that results in injury to the resident or staff to meet with supervisory staff to evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

In our November 1994 proposed rule, we proposed a separate condition of participation in § 483.220 entitled ''Health Services,'' which would require each facility to have written transfer agreement(s) in effect with one or more Medicaid-approved hospitals that reasonably ensures a resident will be transferred in a timely manner from the facility to the hospital when transfer is medically necessary for medical care or acute psychiatric care. In addition, we proposed to require that medical and other information needed for care of the resident be exchanged between the institutions, and that medical care be available to each resident 24 hours a day as may be necessary.

We received one comment on the transfer agreement requirement stating that it would be difficult to meet this requirement because most facilities are not affiliated with a hospital and that admission criteria and placement authority rests with each county and insurance provider. We considered the commenter's rationale but believe these agreements are necessary because the use of restraint or seclusion may place a resident at risk for an acute medical crisis. Therefore, we are incorporating in this CoP the requirement that each facility have written transfer agreement(s) or affiliations in place.

Section 483.374 Facility Reporting

According to the GAO report, reporting requirements play a central role in reducing restraint use and improving the safety of individuals in treatment settings. The report further states that in addition to tracking restraint rates, reporting of deaths or other significant events to an independent agency can contribute to improved safety for individuals in treatment settings. The GAO report specifically recommended that we mandate that any hospital or residential facility that treats persons with mental illness or mental retardation, as a requirement for receiving Medicare and Medicaid funds, report promptly to the State licensing body and the appropriate State Protection and Advocacy (P&A) system, all patient deaths and serious injuries among persons with mental illness or mental retardation, and to indicate whether restraint or seclusion was used during or immediately prior to the death or injury.

This interim final rule requires each facility to report a resident's death, any serious injury to a resident as defined in this subpart, and a resident's suicide attempt to the State Medicaid agency and, unless prohibited by State-law, the State-designated P&A system. These serious occurrences involving a resident must be reported to the State Medicaid agency and the State-designated P&A system no later than the close of business the next business day following the occurrence. We are also requiring each facility to document all serious occurrences in the resident's record. In the case of a minor, we are requiring the facility to notify (within 24 hours of the occurrence) the resident's parent(s) or legal guardian(s) in order to provide the parent(s) or legal guardian(s) the opportunity to participate in decisions that may have to

be made regarding the resident. We are requiring staff to document in the resident's record that these contacts were made. It should be noted that the facility reporting requirements in this rule exceed the minimum requirements for facility reporting in section 3207 of the Children's Health Act of 2000.

Regulations titled ''Substance Abuse and Mental Health Services Administration; Requirements Applicable to Protection and Advocacy of Individuals with Mental Illness' published by the Department of Health and Human Services on October 15, 1997 (62 FR 53548) grant the P&A system the authority to protect and advocate for the rights of individuals with mental illness and to investigate reports of abuse and neglect in residential facilities that care for and treat individuals with mental illness. The P&As may have access to public and private facilities, residents, and clients, and to facilities' records of individuals with mental illness for the specific purpose of conducting independent investigations of incidents of abuse and neglect.

Under seperate guidance or rulemaking (as appropriate), we will direct the State Medicaid agency to report serious occurrences involving a resident of a psychiatric residential treatment facility to the State survey agency. Section 1902(a)(33)(B) of the Act requires States to survey institutional providers, to certify that they meet our regulations for participation in the Medicaid program under the State plan.

Section 483.376 Education and Training

We are requiring the facility to provide ongoing education and training for staff including training in the safe and appropriate use of restraint and seclusion, as well as alternative nonintrusive behavior modification techniques. We also are requiring that staff be certified in the use of cardiopulmonary resuscitation. This training must be performed by individuals qualified by education, training, and experience. Staff must be able to successfully demonstrate, in practice, all techniques learned related to emergency safety interventions. Staff personnel records must document that this training was successfully completed. Staff must demonstrate their competencies on a semiannual basis. Each facility must make all training programs and materials available for review by HCFA, the State Medicaid agency, and the State survey agency. It should be noted that the education and training requirements in this rule exceed the minimum requirements for education and training in section 3207 of the Children's Health Act of 2000.

We believe this training is essential because restraint and seclusion can be dangerous to both the individual being restrained or secluded and to staff applying restraint or seclusion. Restraining individuals can involve physical struggle, pressure on the chest, or other interruptions in breathing. Having staff trained in alternative techniques to avoid restraint use is important, but staff should also be trained in the proper application and removal of restraints and in how to monitor individuals in restraint or seclusion. The GAO report stated that the Joint Commission on Accreditation of Health Care Facilities (JCAHO) had reviewed 20 restraint-related deaths and found that in 40 percent, the cause of death was asphyxiation, while strangulation, cardiac arrest, or fire had caused the remainder. The report recommended that we require any inpatient or residential facility that treats persons with mental illness to ensure that staff regularly receives training and refresher courses in alternate methods to handle agitated or potentially violent patients and document their receipt of training as a requirement for receiving Medicare and Medicaid funds.

III. Response to Comments on November 1994 Proposed Standards Governing Restraints and Seclusion

In response to our November 1994 proposed rule, we received the following comments, which specifically addressed our proposed standards for restraints. Most of the commenters suggested that our standards address seclusion as well as restraints. We agree with the commenters and have included in this interim final rule standards addressing the use of both seclusion and restraint.

One commenter stated that we should prohibit the use of any type of restraint, including seclusion and time-out rooms. Six commenters stated we should prohibit restraints because they are not therapeutic and if they are allowed for one purpose, they cannot be monitored for other uses.

While we recognize that serious consequences can result from the inappropriate use of restraint or seclusion as discussed previously, we believe that restraint or seclusion used only in an emergency safety situation to ensure the safety of the resident or others is permissible when staff have been properly trained in the safe use of such interventions. Therefore, we have rejected these comments because we believe that the type of intervention used to ensure the safety of a resident or others during an emergency safety situation should be the decision of the professionals involved in the situation.

Three commenters contended that restraints/seclusion should not be included in the plan of care and should be used only when an individual is a danger to himself or others, or is a serious disruption to the therapeutic environment. They also stated that restraints should be used only as long as physical danger continues. We generally agree with these comments, and as discussed previously, have limited the use of restraint or seclusion to emergency safety situations to ensure the safety of the resident or others in the facility. We are permitting the use of restraint or seclusion only until the emergency safety situation has ceased and the safety of the resident or safety of others can be ensured, even if the restraint or seclusion order has not expired. We are specifically prohibiting the use of standing orders for restraint or seclusion in these facilities.

Two commenters suggested deleting ''involuntary'' before seclusion in the proposed ''freedom from abuse standard'' and suggested we include seclusion under our ''restraint'' standard. We are not including a standard entitled ''freedom from abuse'' in this rule. Rather, we have separately defined restraint, seclusion, and time out in this rule. We believe our definitions of seclusion and time out sufficiently address the difference between ''voluntary'' and ''involuntary seclusion'' and therefore address the commenter's concerns.

Seven commenters stated that we should allow seclusion because it is less intrusive and restrictive than restraints, but that we should specify procedures governing its use, including authorization by the attending physician within a brief period before it is imposed, observation at frequent intervals and access to meals and toilet. These commenters stated that parents should be notified within 24 hours and that the treatment team should meet as soon as possible but within 24 hours to discuss any potential modification of the treatment plan based on the conditions that led to seclusion, and that a discussion with the individual should take place following seclusion. As noted previously, we have included standards governing the use of seclusion as well as restraints in this rule including the requirement that a physician must order restraint or seclusion. We are allowing a registered nurse to obtain the physician's verbal order at the time that restraint or

seclusion is initiated, but are requiring that the physician's verbal order be followed up with the physician's signature verifying the order. We are requiring that staff be physically present continually assessing and monitoring a resident in restraint or seclusion. We are also requiring that if a resident is a minor as defined in this subpart, the parent or guardian must be notified of the use of restraint or seclusion as soon as possible after the initiation of an emergency safety intervention. While we are not requiring that the treatment team meet within 24 hours of a resident being restrained or secluded, we are requiring that if the physician ordering the use of restraint or seclusion is not the resident's treatment team physician, then the ordering physician or a registered nurse must consult with the resident's treatment team physician as soon as possible. Some of these commenters recommended that seclusion be supervised by a psychiatrist or licensed psychologist. We agree with the need for supervision of a resident in restraint as well as seclusion but do not agree that supervision should be performed by a psychiatrist or licensed psychologist because the services of a psychiatrist or licensed psychologist may not always be available in these facilities. However, to ensure resident safety, we are requiring that clinical staff continually monitor and assess a resident in restraint or seclusion.

One commenter stated that only the least intrusive passive restraints for the protection of the individual or others be used and that we not allow seclusion or time out rooms or chemical restraints, mechanical restraints or adverse conditioning. We are not adopting the recommendation that we restrict a facility's use of restraints to the least intrusive passive restraints. While we recognize the commenter's concern, we believe that the type of intervention used to protect a resident should be the decision of the professionals involved with the situation. Our standards governing orders for restraint and seclusion require a physician to order the least restrictive intervention that is most likely to be effective in the emergency safety situation. Furthermore, we have included standards requiring that staff receive education and training in identifying behavior and events that may trigger an emergency safety situation, as well as education and training in the use of nonphysical intervention skills such as de-escalation, active listening and mediation conflict resolution. With regard to the comment that time out not be allowed, we have defined ''time out'' to clarify that it is not a form of seclusion, because the resident in time out cannot be physically prevented from leaving the time-out area.

Four commenters stated we should entirely prohibit the use of restraints on youngsters and that only time out and other means should be used in times of crisis. As stated above, we believe that the type of intervention used to ensure the safety of a resident or others in an emergency safety situation should be the decision of the professionals involved in that specific situation. These commenters also contended that restraints are too often justified on the basis of self-protection when they are really used for staff convenience, and that if restraints are allowed in certain circumstances, it is not possible to monitor for improper use. We recognize the commenter's concern and, therefore, our restraint and seclusion policy states that a resident has the right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation. We believe that the standards governing restraint and seclusion, including allowing only a board-certified psychiatrist or a licensed physician to order restraint or seclusion, imposing time limits on the use of restraint and seclusion that are consistent with JCAHO standards, requiring continual monitoring and assessment of residents in restraint or seclusion, and requiring that a resident's record be documented each time restraint or seclusion is used, will serve to ensure the safety of residents and diminish the inappropriate use of restraint and seclusion.

One commenter stated that a resident's parents should be notified within 24 hours whenever seclusion is used and that the treatment team should meet as soon as possible to discuss any needed modification to the plan. The commenter suggested that plan modifications should be based on analysis of the conditions leading to seclusion and discussion with the individual following seclusion. We partially agree with these comments and are requiring a facility to notify the parent(s) or legal guardian(s) of a minor resident who is restrained or placed in seclusion as soon as possible after the initiation of each emergency safety intervention. In addition, we are requiring that postintervention debriefings be conducted within 24 hours after the use of restraint or seclusion. The first debriefing will provide the resident and staff involved in the use of a restraint or seclusion the opportunity to discuss the circumstances that resulted in its use, as well as opportunity for the resident and staff to develop strategies that can be employed to prevent the future use of restraint or seclusion. A second debriefing between appropriate supervisory and administrative staff and staff directly involved in the restraint or seclusion of a resident must be provided to allow for a review and discussion of the situation that required the use of restraint or seclusion, including a discussion of alternative techniques that staff might have employed and procedures staff could implement to prevent future restraint or seclusion. We are requiring that changes identified through these debriefings be documented in the resident's treatment plan.

One commenter suggested we delete the provision that a facility may not administer any psychoactive drugs for purposes of discipline or convenience from our standard on restraints. The commenter stated that facilities do not ''use'' drugs, and stated that drugs are prescribed by a physician as clinically appropriate in his or her opinion. The commenter asserted that this provision interferes with the practice of medicine. We agree and have not included this language in our standards governing restraints in this interim final rule. However, we are prohibiting the use of any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.

One commenter stated that we need program standards for the prescription and administration of medication, especially psychoactive medication. We have rejected the suggestion that we set standards governing the use of medications because we believe to do so would amount to our practicing medicine. We have generally declined to set standards that would limit or preclude the professional discretion of physicians. However, we are prohibiting the use of any form of restraint when used for coercion, discipline, or convenience because these uses are medically unnecessary. Another commenter argued that the standard governing drugs is much too loose and suggested six conditions relating to drug therapy that we should include as part of our standard. As stated above, we do not believe that we have authority to set standards of practice regarding the use of medications. Two commenters suggested we establish a separate condition of participation for pharmacy services because medication is a primary component of active treatment, and risk of medication error is substantial. We have rejected this suggestion at this time because we are currently publishing only standards

governing the use of restraint and seclusion in this interim final rule.

IV. Response to Comments on This Interim Final Rule

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this document, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Proposed Rulemaking

In accordance with the requirements of the Administrative Procedures Act (APA), we ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule before the final rule is made effective. The notice of proposed rulemaking required by the APA includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subject matter and issues involved. Consistent with that practice, the November 1994 proposed rule proposed limitations on the use of restraint and seclusion by psychiatric residential treatment facilities that provide inpatient psychiatric services to individuals under age 21 that we have clarified and further developed in this interim final rule. In addition, we provided the public with notice of our heightened concern on this issue in our request for comment in the July 1999 interim final rule on hospital restraint and seclusion standards.

We have made some important additions to the 1994 proposed rule based both on comments received in response to the proposed rule and on the information sources referenced in this preamble. To the extent that there are provisions of this interim final rule that are not a logical outgrowth of the 1994 proposed rule, we are waiving the APA rulemaking procedure. The APA rulemaking procedure can be waived if the agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that the danger and risks to children and adolescents from inappropriate restraint and seclusion practices are substantiated by continued reports of deaths and serious injuries that are occurring in residential settings. To protect the health and safety of residents, we believe we are justified in applying more prescriptive standards in this interim final rule governing the use of restraint and seclusion in psychiatric residential treatment facilities than those proposed in the November 1994 proposed rule or those promulgated in the July 1999 hospital interim final rule.

Significant public attention has been focused on restraint and seclusion practices in psychiatric residential treatment facilities providing services to children and adolescents. In response to concerns about the inappropriate use of restraint and seclusion in these facilities, the Congress passed and the President signed in October 2000, legislation to regulate the use of restraint and seclusion in facilities that receive Medicare and Medicaid funding. That legislation, the Childrens Health Act of 2000, provides additional explicit statutory authority for many of the provisions of this rule.

As we noted, the *Courant* articles of October 1998 reported that 142 individuals had died in restraint-related incidents in the preceding decade. It was reported that many of these deaths were the result of improper use of mechanical restraints and that some could have been prevented by routine monitoring of the individual. One-third of the deaths reported by the *Courant* were due to asphyxia, and one-quarter were due to cardiac-related causes. As noted earlier, a GAO report published in September 1999, identified 24 deaths associated with restraint or seclusion in fiscal year 1998. The GAO indicated that the source of the data on the number of deaths reported was restraint or seclusion-related deaths that were investigated by the Protection and Advocacy agencies in all 50 states and the District of Columbia in fiscal year 1998. The GAO study concluded that the full extent of related injuries and deaths from improper restraint or seclusion practices is unknown because there is no comprehensive reporting system to track injuries and deaths, or a system that tracks the rates of restraint or seclusion use by a facility. The report stated that because reporting is so fragmentary, many more deaths related to restraint or seclusion may have occurred. And finally, even as we prepare to publish this rule, the media continue to investigate and report abusive practices, including deaths and injuries to children that are the result of inappropriate use of restraint and seclusion in psychiatric residential treatment facilities.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis because delaying the effective date of the rule would be contrary to public interest. We are providing a 60-day period for public comment.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the sections that contain information collection requirements.

Section 441.151 General Requirements

Paragraph (a)(4) of this section requires that inpatient psychiatric services for individuals under age 21 must be certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with § 441.152.

The certification requirement of this section is not new. The paperwork burden is contained in the referenced § 441.152, which specifies the certification requirements, has been approved under OMB #0938–0754.

Section 483.356 Protection of Residents

Paragraph (c) of this section, ''Notification of facility policy,'' requires facility staff to inform each incoming resident (and, in the case of a minor, the resident's parent(s) or legal guardian(s)) at admission, of the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that may occur while the resident is in the facility. Staff must obtain an acknowledgment, in writing, from the resident, or in the case of a minor, the

resident's parent(s) or legal guardian(s), that he or she has been informed of the facility's policy. Staff must file the written acknowledgment in the resident's record.

In order to estimate the burden of this requirement on facilities, we used data from National Center for Health Statistics, *Health, United States* published in 1999 (page 278) which indicated that there were 459 psychiatric residential treatment facilities in 1994, the latest year for which data are available. We estimate an annual growth rate in the number of these facilities to be 2 percent. Using this growth rate, we determined that there would be approximately 475 to 500 psychiatric residential treatment facilities nationally as of FFY 2001. These data showed that there are approximately 70 residents per facility at any one time. This equates to a total nationwide bed capacity approximating 35,000 beds. Through an informal survey of providers, we estimate an average resident length of stay to be 9 months and based on a 9-month stay, each facility would admit an estimated average of 95 residents per year, or an estimated total of up to 47,500 residents nationally. We believe it will take each facility 8 hours to develop a policy statement regarding the use of restraints and seclusion, and an average of 30 minutes to present the information to each incoming resident and the parent(s) or guardian(s), and to obtain and file the acknowledgment.

Thus, there will be a one-time burden of 4,000 hours nationwide to develop the statement and an annual burden of 48 hours per psychiatric residential treatment facility and 23,750 hours nationally to disclose the policy.

Section 483.358 Orders for the Use of Restraint or Seclusion

In accordance with paragraph (d) of this section, a physician's verbal order must be obtained by a registered nurse at the time the emergency safety intervention is initiated by staff if a written order cannot be easily obtained, and the verbal order must be followed with the physician's signature verifying the verbal order.

While the information collection requirement in this paragraph is subject to the PRA, we believe the burden associated with it is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

In accordance with paragraph (h) of this section, each order for restraint or seclusion must be documented in the resident's record. Documentation must include—

(1) The ordering physician's name;

(2) The date and time the order was obtained;

(3) The emergency safety intervention ordered, including the length of time for which the physician authorized its use;

(4) The time the emergency safety intervention actually began and ended;

(5) The time and results of any 1 hour assessments required in paragraph (f) of this section.

(6) The emergency safety situation that required the resident to be restrained or put in seclusion; and

(7) The name, title, and credentials of staff involved in the emergency safety intervention.

There are an estimated average of 47 situations per month per psychiatric residential treatment facility where restraint or seclusion is used, or approximately 282,000 situations nationally, per year. We estimate that it will take approximately 30 minutes per situation, or 282 hours annually per psychiatric residential treatment facility, for a national total of 141,000 hours annually to comply with the documentation requirements.

In accordance with paragraph (i) of this section, the facility must maintain an aggregate record of all emergency safety situations, the interventions used, and their outcomes.

Based on 15 minutes per situation, we estimate that it will take 141 hours per psychiatric residential treatment facility, and a national total of 70,500 hours annually to comply with this documentation requirement.

In accordance with paragraph (j) of this section, the physician ordering the restraint or seclusion must sign the order in the resident's record as soon as possible, but no later than 24 hours after the order is issued.

While these information collection requirements are subject to the PRA, we believe the burden associated with them is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

§ 483.360 Consultation With Treatment Team Physician

Paragraph (a) of this section requires that, if the physician ordering the use of restraint or seclusion is not part of the resident's treatment team, the facility must consult with the resident's treatment team physician as soon as possible and inform the team physician of the emergency safety situation that required the resident to be restrained or placed in seclusion. Paragraph (f) of this section requires the facility to document in the resident's record the date and time the team physician was consulted.

We estimate that it will take approximately 30 minutes per situation, 282 hours annually per psychiatric residential treatment facility, or 141,000 hours nationally to comply with the documentation and disclosure requirements of this section, based on an assumption that approximately half of the situations will require that the facility staff separately notify the treatment team physician.

Section 483.366 Notification of Parent(s) or Legal Guardian(s)

If the resident is a minor as defined in § 483.352, paragraph (a) of this section requires the facility to notify the parent(s) or legal guardian(s) of a resident who has been restrained or placed in seclusion as soon as possible after the initiation of each emergency safety intervention.

Paragraph (b) of this section requires the facility to document in the resident's record that the parent(s) or legal guardian(s) has been notified of the emergency safety intervention, including the date and time of notification and the name of the staff person providing the notification.

We estimate that it will take 30 minutes to notify a parent or guardian and 15 minutes to document that notification. The total annual burden will be 423 hours per psychiatric residential treatment facility and 211,500 hours nationally, based on the assumption that virtually all of the residents will be minors as defined in § 483.352.

Section 483.370 Postintervention Debriefings

Paragraph (c) of this section requires that staff document in the resident's record that the debriefing sessions required by this section took place.

This documentation will take approximately 30 minutes per situation, or an annual burden of 282 hours per psychiatric residential treatment facility and 141,000 hours nationally.

Section 483.372 Medical Treatment for Injuries Occurring as a Result of an Emergency Safety Situation

Paragraph (b) of this section requires the psychiatric residential treatment facility to have affiliations or written transfer agreements in effect with one or more hospitals approved for participation under the Medicaid program that reasonably ensure that—

(1) A resident will be transferred from the facility to the hospital and admitted

in a timely manner when a transfer is medically necessary for medical care or acute psychiatric care;

(2) Medical and other information needed for care of the resident in light of such a transfer, will be exchanged between the institutions in accordance with State medical privacy law, including any information needed to determine whether the appropriate care can be provided in a less restrictive setting; and

(3) Services are available to each resident 24 hours a day, 7 days a week.

Paragraph (c) of this section requires that staff document in the resident's record all injuries that occur as a result of an emergency safety situation, including injuries to staff resulting from that intervention.

While these information collection requirements are subject to the PRA, we believe the burden associated with them is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

Section 483.374 Facility Reporting

Paragraph (a) of this section requires each psychiatric residential treatment facility that provides inpatient psychiatric services to individuals under age 21 to attest, in writing, that the facility is in compliance with our standards governing the use of restraint and seclusion. This attestation must be signed by the facility director.

We estimate that it will take 8 hours per facility to be able to attest to compliance with the standards. This is a one-time burden. The national burden will be 500 multiplied by 8, or 4,000 hours.

Paragraph (b) of this section requires that the facility report serious occurrences involving a resident to both the State Medicaid Agency and, unless prohibited by State law, the State-designated Protection and Advocacy System. The report must include the name of the resident involved in the serious occurrence, a description of the occurrence, and the name, street address, and telephone number of the facility. In the case of a minor, the facility must also notify the parent(s) or legal guardian(s) of the resident involved in a serious occurrence.

Staff must document in the resident's record that the contacts above were made.

The burden for notifying parent(s) or legal guardian(s) is addressed under § 483.366.

We estimate that it will take an additional 15 minutes to document that these contacts were made, for an average annual burden of 141 hours per psychiatric residential treatment facility, with an annual national total of 70,500 burden hours.

Section 483.376 Education and Training

Paragraph (f) requires facilities to provide for assessments of staff education and training needs by requiring staff to demonstrate their competencies related to the use of emergency safety interventions on a semiannual basis. This section also provides for staff to demonstrate, on an annual basis, their competency in the use of cardiopulmonary resuscitation.

Paragraph (g) of this section requires the facility to document in the staff personnel records that the training required by § 483.376 was successfully completed.

While these information collection requirements are subject to the PRA, we believe the burden associated with them are exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

Comments

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Attn: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, HCFA Desk Officer.

VII. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this interim final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all psychiatric residential treatment facilities are considered to be small entities. Individuals and States are not included in the definition of a small entity. Consistent with the RFA, we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. This regulation does not have an impact on small rural hospitals. However, to the extent the rule may have significant effects on psychiatric residential treatment facilities and their residents, or be viewed as controversial, we believe it is desirable to inform the public of our projections of the likely effects of the proposals.

The Unfunded Mandates Reform Act of 1995 requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in a mandated expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more. This rule has no mandated consequential effect on State, local, or on tribal governments, or the private sector. We have described the anticipated effects of this regulation below.

We have reviewed this interim final rule with comment under the threshold criteria of Executive Order 13132, Federalism. We have determined that this interim final rule with comment does not significantly affect the rights, roles, and responsibilities of States.

This rule is the product of serious concern about improper use of restraints and seclusion in psychiatric residential treatment facilities. This led us to set forth this interim final rule with comment to ensure the protection of residents of these facilities from improper restraint and seclusion

practices that could contribute to death or serious injury.

B. Anticipated Effects

1. Effect on Psychiatric Residential Treatment Facilities

We believe that many psychiatric residential treatment facilities are already in compliance with this rule because of State laws governing the use of restraint and seclusion, as well as their own quality assurance and improvement systems. Additionally, psychiatric residential treatment facilities must meet current Federal requirements for accreditation in order to provide inpatient psychiatric services to individuals under age 21. We are aware that the national accrediting organizations are currently in the process of revising their standards governing the use of restraint and seclusion. Therefore, the impact of this rule will not be determinable to the extent that the accrediting organizations' revised restraint and seclusion standards are or are not compatible with the requirements of this rule.

There are several provisions that will have an impact on psychiatric residential treatment facilities. The facilities will have to notify a parent(s) or a legal guardian(s) when restraint or seclusion is used, and ensure that staff are provided with initial and ongoing education and training in the proper and safe use of seclusion and the proper and safe use of restraint, and in techniques and alternative methods for handling resident behavior, symptoms, and situations that traditionally have been treated by the use of restraints or seclusion.

There will be facility costs associated with developing a policy on the use of restraint and seclusion in emergency safety situations and ensuring that this policy statement is available to residents and family members as well as facility staff.

We anticipate that some facilities will need additional registered nurses to be present during all shifts, including weekends, because we are requiring that, when a physician is not present to order the use of restraint or seclusion, a registered nurse must be present to obtain the physician's verbal order, and to contact the ordering physician should an emergency safety situation continue beyond the time limit of the physician's order. In addition, when a physician is not available, we are requiring a registered nurse to perform the 1 hour assessment of an individual who is restrained or secluded, and to evaluate the resident's well-being after he or she is removed from restraint or seclusion.

While psychiatric residential treatment facilities generally offer a less restrictive alternative to hospital treatment of psychiatric conditions, they are recognized as an inpatient setting for the purposes of providing mental health services under the Medicaid Inpatient Psychiatric Services Under Age 21 benefit. Unlike hospitals, which have a full cadre of medical professional staff present on a 24-hour basis, psychiatric residential treatment facilities may not be required to provide 24-hour coverage by licensed medical professional staff. In our informal research, we found that some facilities employ medical professional staff on a less than 24-hour basis. One facility contracts with a physician to provide 24-hour ''on-call'' coverage which does not equate to continual onsite coverage by medical staff. Since these facilities are providing medically necessary services in an inpatient setting, we believe that medical professional staff should be present on a 24-hour basis.

An emergency safety situation involving a resident of a facility can occur at any time, requiring staff to use restraints or seclusion as an emergency intervention to ensure the resident's safety or the safety of others. These emergencies often occur in the evening or on weekends when staffing levels may be lower than during the day. When such a situation occurs in a hospital, trained medical professional staff are onsite 24 hours a day to assist in the proper and safe application and monitoring of restraints. However, while psychiatric residential treatment facilities provide essentially the same inpatient care to vulnerable children and adolescents, trained medical professional staff are not required to be present 24 hours a day. This disparity creates increased risk for serious injury or even death when staff are faced with an emergency safety situation requiring the use of restraint or seclusion. Therefore, we believe that it is not only reasonable but critical to resident safety that we require these facilities to provide 24-hour onsite coverage by a registered nurse. It would be irresponsible not to extend the same level of protections to children and adolescents in these facilities that are provided in a hospital.

In addition, this rule requires psychiatric residential treatment facilities to report both to the State Medicaid agency and the State-designated P&A system, any serious occurrence, including a resident's death, a serious injury to a resident, or a resident's suicide attempt. In the case of a minor, the facility must also notify the parent(s) or legal guardian(s) of the resident involved in a serious occurrence. We believe that this new reporting requirement will have only a minimal cost impact on facilities.

The *Hartford Courant*, a Connecticut newspaper, heightened public awareness of this issue with a series of articles in October 1998 citing the results of a study that identified 142 deaths from the use of seclusion and restraint in behavioral health treatment facilities over the past 10 years. However, this number includes deaths from the use of seclusion and restraint in more than just the psychiatric residential treatment facility setting. We believe the nationwide reporting of deaths and serious injuries in psychiatric residential treatment facilities will contribute to the reduction of deaths or serious injuries that result from the inappropriate use of restraint and seclusion.

We believe that there will be costs associated with developing and implementing training programs for facility staff. However, we are not prescribing how facilities will meet the training requirements. Therefore, psychiatric residential treatment facilities will be afforded the flexibility to provide the training directly through ''in-house'' training or to obtain a contractor to provide the training either at the facility or off-site.

2. Effect on Beneficiaries

The implementation of this regulation will serve to protect residents and staff of psychiatric residential treatment facilities. We anticipate that the benefits will include a significant reduction in the inappropriate use of restraint and seclusion which will result in a reduction in the number of deaths and serious injuries to residents and facility staff.

3. Effect on Medicaid Program

We expect the implementation of this regulation will generate some costs to the Medicaid program. There will be additional facility costs as described in the table below.

C. Summary of Estimated Costs

The following are the assumptions and the methodology we used to derive the estimated costs for implementing this rule. We are soliciting public comments regarding any available information that may affect the cost estimates associated with the implementation of this rule.

ANNUAL COST
[$ Millions]

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Psych. Residential Treatment Facility Costs:					
Medicaid—Federal Share	16	31	31	33	34
Medicaid—State Share	12	24	24	25	26
Other Payers	1	3	3	3	3
Total	29	58	58	61	63
State Medicaid Administrative Costs:					
Federal Share	1	1	1	1	1
State Share	1	1	1	1	1
Total	2	2	2	2	2
Fed. Admin. Costs for Survey and Certification					
Total	(1)	(1)	(1)	(1)	(1)

[1]Less than $0.5 million.

Psychiatric Residential Treatment Facility Costs

Psychiatric residential treatment facility costs are comprised of three categories: (1) additional registered nursing staff, (2) staff training, and (3) facility reporting.

Data from *Health, United States, 1999* (National Center for Health Statistics, p. 278) indicate that there were 459 psychiatric residential treatment facilities in 1994, the latest year for which data are available. Resident care staff in these facilities totaled about 44,000 in that same year. Using a 2 percent growth rate trend developed from the *Health US 1999* data above, we projected the number of facilities and the number of resident care staff for Federal fiscal years (FFY) 2001 through 2005.

1. *New staff costs.* The *Health US 1999* data on staffing for psychiatric residential treatment facilities shows an average of 3.2 full-time-equivalent (FTE) registered nurses per facility. The requirement for 24 hour per day registered nurse coverage would require a minimum of 4.2 FTEs (168 hours per week divided by 40 hours per week per FTE). Each facility would, at a minimum, have to provide for an average of one additional FTE registered nurse. For these estimates we have assumed an increase of 1.5 FTE registered nurses per facility, which translates into a requirement for approximately 790 additional registered nurses to provide the necessary coverage in all psychiatric residential treatment facilities in FFY 2001. We trended the registered nurse staffing requirement forward through 2005 based on our estimation that resident population growth would approximate 2 percent per year. The numbers of registered nurses needed to provide coverage in years subsequent to FFY 2001 will vary with changes in the numbers of residents. We assumed the total annual compensation (salary and fringe benefits) for each registered nurse to be $56,000 in FFY 2001, totalling $44.2 million nationally. The total costs are estimated to increase by 3 percent per year thereafter. Data taken from the *Nursing Department Compensation Report 1999–2000* (Hospital and Healthcare Compensation Service, Oakland New Jersey, page 18) indicate that the annual national average base salary for inpatient hospital psychiatric nursing positions (equivalent in skills and payment level to the nurses working in psychiatric residential treatment facilities) would approximate $19.99 per hour or $41,580 annually for 1999, the latest year for which data are available. The Report indicates that the average increase in psychiatric nursing salaries approximates 3 percent per year. Using a 3 percent growth rate we projected the annual salary for psychiatric nurses for Federal fiscal years 2001 through 2005. We added a factor of 27.0 percent to psychiatric nurses salary for fringe benefit costs. The term fringe benefits includes paid leave, supplemental pay, insurance, retirement, savings and other benefits. The 27.0 percent was shown for nurse fringe benefit costs in the publication: *Employer Costs for Employee Compensation, 1986–1998,* Table 2, Employer Costs Per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Civilian Workers, by Occupational and Industry Group, March 1998'' (U.S. Department of Labor, Bureau of Labor Statistics, page 10). The rate of fringe benefits to salary ranged from 27.0 to 27.7 percent over the period from March 1994 through March 1998, with the majority at 27.0 percent, as shown in Tables 2, 18, 34, 50, and 66 of the same publication. The year 1998 is the latest period for which such data are available. As a result, we used 27.0 percent as a constant in our cost projection for Federal fiscal years 2001 through 2005 as any variation in rate would represent a very limited change in projected fringe benefit costs.

2. *Training costs.* Existing Federal Medicaid regulations at 42 CFR 441.151 require that a psychiatric facility that provides inpatient psychiatric services to individuals under age 21 be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization, with comparable standards that is recognized by the State. Most of these facilities are currently accredited by JCAHO. In August 2000, JCAHO published its Comprehensive Accreditation Manual for Hospitals, which includes revised behavioral health care standards governing the use of restraint and seclusion. These revised restraint and seclusion standards apply to all behavioral health care settings, including residential treatment centers. Specifically, JCAHO strengthened existing standards governing training requirements for direct care staff in the safe use of restraint and seclusion and the requirement for education and assessment of staff competence in minimizing the use of restraint and seclusion. These new standards will take effect January 1, 2001.

We have made the following assumptions with regard to staff training: (1) That the revised JCAHO

training requirements for facility accreditation will not fully meet the training requirements under this interim final rule, and therefore have included estimated costs for staff training which we obtained through research on consultants who provide this specific service; (2) that, at a minimum, staff training to meet the requirements of this rule would cost approximately $250 per staff person for initial training, and approximately $100 annually for ongoing staff training, and (3) that only 10 percent of staff would fully meet the training requirements under this rule.

We estimated that by FFY 2001 the facility staff would have grown to approximately 50, 000 from the 44,000 staffing estimate for 1994 (see page 69). We assume that approximately 90 percent of the facility staff, or about 45,000 employees would require training in the use of restraint and seclusion,. We estimate that approximately 75 percent of the staff to be trained, or 33,750, would require initial training at an estimated $250 per person, totaling approximately $8.4 million. The remaining 11,250 staff would require ongoing training at about $100 per employee, amounting to an estimated $1.1 million.

In addition to direct training costs, we also assumed that facilities would incur related consulting costs averaging 10 hours per month per facility at a cost of $40 per hour. Inflation for all training and related costs was assumed to be 5 percent per year.

3. *Reporting costs.* In the absence of any current verifiable data on serious occurrences involving residents in psychiatric residential treatment facilities, we have assumed the costs of the required reporting of these events to be approximately $250 per facility, per year. We are soliciting comments regarding any available information on actual reporting costs.

Total estimated facility costs of compliance, as shown in the above table, are estimated to be $58 million in the first full year of implementation (FFY 2002). This figure represents about 1.6 percent of the total projected expenditures of $3.3 billion for psychiatric residential treatment facilities in that year, as derived from the *Health US 1999* data.

State Medicaid Administration Costs

States will have additional responsibilities and costs for survey and certification requirements associated with the requirements of this regulation. Beginning in Federal fiscal year 2001, we project there will be 500 residential treatment facilities, or an average of 10 facilities per state. For each state, we estimated an annual survey agency cost equivalent to 5 days to conduct 2 onsite reviews (20 percent sample) to validate facility attestation to our new restraint and seclusion standards. We also estimated that documentary reviews of facility attestations, including any necessary follow up with facilities in conjunction with the attestation would require the survey agency to incur costs equivalent to 5 days. We also estimated costs associated with restraint and seclusion complaints which would require investigation by the survey agency. We estimated 2 complaints annually requiring onsite follow up by the survey agency, including enforcement activities and appeals-related activities. We estimated each complaint would require 2 days for onsite visits, 2 days for follow up and 1 day for appeals-related activities for a total of 10 days for 2 complaints. We assumed the need for an additional one-tenth of an FTE per state to support this additional workload.

Current expenditures indicate an average cost (salary and benefits) of $50,000 for state survey agency professional personnel; one-tenth of one FTE would cost $5,000 per year. Because these are Medicaid-only facilities, the survey and certification costs will be paid under the Medicaid program. Based on the current 75/25 Federal-state match, the average expenditures for each state would be $3,750 in Federal Medicaid funds, and $1,250 in state-matching funds.

Other Assumptions

Available evidence indicates that residents of psychiatric residential treatment facilities are overwhelmingly Medicaid-eligible. Therefore, we have assumed that 95 percent of the costs incurred by these facilities to implement these new regulations would be defrayed by the Medicaid program and 5 percent by other payers. We are assuming that States will continue to fully fund the costs of this benefit.

D. Alternatives Considered

We originally considered developing one set of requirements regulating the use of restraint and seclusion for all provider types in the Medicare and Medicaid programs. However, based on public comments received in response to the interim final regulation addressing a similar CoP for hospitals, and recent concerns about restraint and seclusion use for behavior management situations, we concluded that one set of requirements did not afford all patients (or residents) with adequate protections. Moreover, with the enactment of the Children's Health Act of 2000, the Secretary no longer has the discretion to leave this benefit unregulated.

E. Conclusion

The CoP for psychiatric residential treatment facilities sets forth a series of requirements to ensure each resident's physical and emotional health and safety. These requirements address each resident's right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation. The CoP is a new requirement for facilities that provide inpatient psychiatric residential treatment services to Medicaid eligible individuals under age 21. In accordance with the Regulatory Flexibility Act, we have examined the burden this rule may impose on small entities and certify that this rule will not have a significant impact on a substantial number of intities.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professionals, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

A. Part 441 is amended as set forth below:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.151 is revised to read as follows:

§ 441.151 General requirements.

(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with § 441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in § 483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion.

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

B. Part 483 is amended as set forth below:

1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. A new subpart G, consisting of §§ 483.350 through 483.376, is added to part 483 to read as follows:

Subpart G—Condition of Participation for the Use of Restraint or Seclusion in Psychiatric Residential Treatment Facilities Providing Inpatient Psychiatric Services for Individuals Under Age 21

Sec.

483.350 Basis and scope.
483.352 Definitions.
483.354 General requirements for psychiatric residential treatment facilities.
483.356 Protection of residents.
483.358 Orders for the use of restraint or seclusion.
483.360 Consultation with treatment team physician.
483.362 Monitoring of the resident in and immediately after restraint.
483.364 Monitoring of the resident in and immediately after seclusion.
483.366 Notification of parent(s) or legal guardian(s).
483.368 Application of time out.
483.370 Postintervention debriefings.
483.372 Medical treatment for injuries resulting from an emergency safety intervention.
483.374 Facility reporting.
483.376 Education and training.

Subpart G—Condition of Participation for the Use of Restraint or Seclusion in Psychiatric Residential Treatment Facilities Providing Inpatient Psychiatric Services for Individuals Under Age 21

§ 483.350 Basis and scope.

(a) *Statutory basis.* Sections 1905(a)(16) and (h) of the Act provide that inpatient psychiatric services for individuals under age 21 include only inpatient services that are provided in an institution (or distinct part thereof) that is a psychiatric hospital as defined in section 1861(f) of the Act or in another inpatient setting that the Secretary has specified in regulations. Additionally, the Children's Health Act of 2000 (Pub. L. 106–310) imposes procedural reporting and training requirements regarding the use of restraints and involuntary seclusion in facilities, specifically including facilities that provide inpatient psychiatric services for children under the age of 21 as defined by sections 1905(a)(16) and (h) of the Act.

(b) *Scope.* This subpart imposes requirements regarding the use of restraint or seclusion in psychiatric residential treatment facilities, that are not hospitals, providing inpatient psychiatric services to individuals under age 21.

§ 483.352 Definitions.

For purposes of this subpart, the following definitions apply:

Drug used as a restraint means any drug that—

(1) Is administered to manage a resident's behavior in a way that reduces the safety risk to the resident or others;

(2) Has the temporary effect of restricting the resident's freedom of movement; and

(3) Is not a standard treatment for the resident's medical or psychiatric condition.

Emergency safety intervention means the use of restraint or seclusion as an immediate response to an emergency safety situation.

Emergency safety situation means unanticipated resident behavior that places the resident or others at serious threat of violence or injury if no intervention occurs and that calls for an emergency safety intervention as defined in this section.

Mechanical restraint means any device attached or adjacent to the resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.

Minor means a minor as defined under State law and, for the purpose of this subpart, includes a resident who has been declared legally incompetent by the applicable State court.

Personal restraint means the application of physical force without the use of any device, for the purpose of restricting the free movement of a resident's body.

Psychiatric Residential Treatment Facility means a facility other than a hospital, that provides psychiatric services, as described in subpart D of part 441 of this chapter, to individuals under age 21, in an inpatient setting.

Restraint means a ''personal restraint,'' ''mechanical restraint,'' or ''drug used as a restraint'' as defined in this section.

Seclusion means the involuntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.

Serious injury means any significant impairment of the physical condition of the resident as determined by qualified medical personnel. This includes, but is not limited to, burns, lacerations, bone fractures, substantial hematoma, and injuries to internal organs, whether self-inflicted or inflicted by someone else.

Staff means those individuals with responsibility for managing a resident's health or participating in an emergency safety intervention and who are employed by the facility on a full-time, part-time, or contract basis.

Time out means the restriction of a resident for a period of time to a designated area from which the resident is not physically prevented from leaving, for the purpose of providing the resident an opportunity to regain self-control.

§ 483.354 General requirements for psychiatric residential treatment facilities.

A psychiatric residential treatment facility must meet the requirements in § 441.151 through § 441.182 of this chapter.

§ 483.356 Protection of residents.

(a) *Restraint and seclusion policy for the protection of residents.* (1) Each resident has the right to be free from restraint or seclusion, of any form, used as a means of coercion, discipline, convenience, or retaliation.

(2) An order for restraint or seclusion must not be written as a standing order or on an as-needed basis.

(3) Restraint or seclusion must not result in harm or injury to the resident and must be used only—

(i) To ensure the safety of the resident or others during an emergency safety situation; and

(ii) Until the emergency safety situation has ceased and the resident's safety and the safety of others can be ensured, even if the restraint or seclusion order has not expired.

(4) Restraint and seclusion must not be used simultaneously.

(b) *Emergency safety intervention.* An emergency safety intervention must be performed in a manner that is safe, proportionate, and appropriate to the severity of the behavior, and the resident's chronological and developmental age; size; gender; physical, medical, and psychiatric condition; and personal history (including any history of physical or sexual abuse).

(c) *Notification of facility policy.* At admission, the facility must—

(1) Inform both the incoming resident and, in the case of a minor, the resident's parent(s) or legal guardian(s) of the facility's policy regarding the use of restraint or seclusion during an emergency safety situation that may occur while the resident is in the program;

(2) Communicate its restraint and seclusion policy in a language that the resident, or his or her parent(s) or legal guardian(s) understands (including American Sign Language, if appropriate) and when necessary, the facility must provide interpreters or translators;

(3) Obtain an acknowledgment, in writing, from the resident, or in the case of a minor, from the parent(s) or legal guardian(s) that he or she has been informed of the facility's policy on the use of restraint or seclusion during an emergency safety situation. Staff must file this acknowledgment in the resident's record; and

(4) Provide a copy of the facility policy to the resident and in the case of a minor, to the resident's parent(s) or legal guardian(s).

(d) *Contact information.* The facility's policy must provide contact information, including the phone number and mailing address, for the appropriate State Protection and Advocacy organization.

§ 483.358 Orders for the use of restraint or seclusion.

(a) Only a board-certified psychiatrist, or a physician licensed to practice medicine with specialized training and experience in the diagnosis and treatment of mental diseases, may order the use of restraint or seclusion.

(b) If the resident's treatment team physician is available, only he or she can order restraint or seclusion. If the resident's treatment team physician is unavailable, the physician covering for the treatment team physician can order restraint or seclusion. The covering physician must meet the same requirements for training and experience described in paragraph (a) of this section.

(c) The physician must order the least restrictive emergency safety intervention that is most likely to be effective in resolving the emergency safety situation based on consultation with staff.

(d) If the physician is not available to order the use of restraint or seclusion, the physician's verbal order must be obtained by a registered nurse at the time the emergency safety intervention is initiated by staff and the physicians verbal order must be followed with the physician's signature verifying the verbal order. The ordering physician must be available to staff for consultation, at least by telephone, throughout the period of the emergency safety intervention.

(e) Each order for restraint or seclusion must:

(1) Be limited to no longer than the duration of the emergency safety situation; and

(2) Under no circumstances exceed 4 hours for residents ages 18 to 21; 2 hours for residents ages 9 to 17; or 1 hour for residents under age 9.

(f) Within 1 hour of the initiation of the emergency safety intervention, a physician or clinically qualified registered nurse trained in the use of emergency safety interventions must conduct a face-to-face assessment of the physical and psychological well being of the resident, including but not limited to—

(1) The resident's physical and psychological status;

(2) The resident's behavior;

(3) The appropriateness of the intervention measures; and

(4) Any complications resulting from the intervention.

(g) Each order for restraint or seclusion must include—

(1) The ordering physician's name;

(2) The date and time the order was obtained; and

(3) The emergency safety intervention ordered, including the length of time for which the physician authorized its use.

(h) Staff must document the intervention in the resident's record. That documentation must be completed by the end of the shift in which the intervention occurs. If the intervention does not end during the shift in which it began, documentation must be completed during the shift in which it ends. Documentation must include all of the following:

(1) Each order for restraint or seclusion as required in paragraph (g) of this section.

(2) The time the emergency safety intervention actually began and ended.

(3) The time and results of the 1-hour assessment required in paragraph (f) of this section.

(4) The emergency safety situation that required the resident to be restrained or put in seclusion.

(5) The name of staff involved in the emergency safety intervention.

(i) The facility must maintain a record of each emergency safety situation, the interventions used, and their outcomes.

(j) The physician ordering the restraint or seclusion must sign the order in the resident's record as soon as possible.

§ 483.360 Consultation with treatment team physician.

If the physician ordering the use of restraint or seclusion is not the resident's treatment team physician, the ordering physician or registered nurse must—

(a) Consult with the resident's treatment team physician as soon as possible and inform the team physician of the emergency safety situation that required the resident to be restrained or placed in seclusion; and

(b) Document in the resident's record the date and time the team physician was consulted.

§ 483.362 Monitoring of the resident in and immediately after restraint.

(a) Clinical staff trained in the use of emergency safety interventions must be physically present, continually assessing and monitoring the physical and psychological well-being of the resident and the safe use of restraint throughout the duration of the emergency safety intervention.

(b) If the emergency safety situation continues beyond the time limit of the physician's order for the use of restraint, a registered nurse must immediately contact the ordering physician in order to receive further instructions.

(c) A physician, or a registered nurse trained in the use of emergency safety interventions, must evaluate the resident's well-being immediately after the restraint is removed.

§ 483.364 Monitoring of the resident in and immediately after seclusion.

(a) Clinical staff, trained in the use of emergency safety interventions, must be physically present in or immediately outside the seclusion room, continually

assessing, monitoring, and evaluating the physical and psychological well-being of the resident in seclusion. Video monitoring does not meet this requirement.

(b) A room used for seclusion must—

(1) Allow staff full view of the resident in all areas of the room; and

(2) Be free of potentially hazardous conditions such as unprotected light fixtures and electrical outlets.

(c) If the emergency safety situation continues beyond the time limit of the physician's order for the use of seclusion, a registered nurse must immediately contact the ordering physician in order to receive further instructions.

(d) A physician, or a registered nurse trained in the use of emergency safety interventions, must evaluate the resident's well-being immediately after the resident is removed from seclusion.

§ 483.366 Notification of parent(s) or legal guardian(s).

If the resident is a minor as defined in this subpart:

(a) The facility must notify the parent(s) or legal guardian(s) of the resident who has been restrained or placed in seclusion as soon as possible after the initiation of each emergency safety intervention.

(b) The facility must document in the resident's record that the parent(s) or legal guardian(s) has been notified of the emergency safety intervention, including the date and time of notification and the name of the staff person providing the notification.

§ 483.368 Application of time out.

(a) A resident in time out must never be physically prevented from leaving the time out area.

(b) Time out may take place away from the area of activity or from other residents, such as in the resident's room (exclusionary), or in the area of activity or other residents (inclusionary).

(c) Staff must monitor the resident while he or she is in time out.

§ 483.370 Postintervention debriefings.

(a) Within 24 hours after the use of restraint or seclusion, staff involved in an emergency safety intervention and the resident must have a face-to-face discussion. This discussion must include all staff involved in the intervention except when the presence of a particular staff person may jeopardize the well-being of the resident. Other staff and the resident's parent(s) or legal guardian(s) may participate in the disussion when it is deemed appropriate by the facility. The facility must conduct such discussion in a language that is understood by the resident's parent(s) or legal guardian(s). The discussion must provide both the resident and staff the opportunity to discuss the circumstances resulting in the use of restraint or seclusion and strategies to be used by the staff, the resident, or others that could prevent the future use of restraint or seclusion.

(b) Within 24 hours after the use of restraint or seclusion, all staff involved in the emergency safety intervention, and appropriate supervisory and administrative staff, must conduct a debriefing session that includes, at a minimum, a review and discussion of—

(1) The emergency safety situation that required the intervention, including a discussion of the precipitating factors that led up to the intervention;

(2) Alternative techniques that might have prevented the use of the restraint or seclusion;

(3) The procedures, if any, that staff are to implement to prevent any recurrence of the use of restraint or seclusion; and

(4) The outcome of the intervention, including any injuries that may have resulted from the use of restraint or seclusion.

(c) Staff must document in the resident's record that both debriefing sessions took place and must include in that documentation the names of staff who were present for the debriefing, names of staff that were excused from the debriefing, and any changes to the resident's treatment plan that result from the debriefings.

§ 483.372 Medical treatment for injuries resulting from an emergency safety intervention.

(a) Staff must immediately obtain medical treatment from qualified medical personnel for a resident injured as a result of an emergency safety intervention.

(b) The psychiatric residential treatment facility must have affiliations or written transfer agreements in effect with one or more hospitals approved for participation under the Medicaid program that reasonably ensure that—

(1) A resident will be transferred from the facility to a hospital and admitted in a timely manner when a transfer is medically necessary for medical care or acute psychiatric care;

(2) Medical and other information needed for care of the resident in light of such a transfer, will be exchanged between the institutions in accordance with State medical privacy law, including any information needed to determine whether the appropriate care can be provided in a less restrictive setting; and

(3) Services are available to each resident 24 hours a day, 7 days a week.

(c) Staff must document in the resident's record, all injuries that occur as a result of an emergency safety intervention, including injuries to staff resulting from that intervention.

(d) Staff involved in an emergency safety intervention that results in an injury to a resident or staff must meet with supervisory staff and evaluate the circumstances that caused the injury and develop a plan to prevent future injuries.

§ 483.374 Facility reporting.

(a) *Attestation of facility compliance.* Each psychiatric residential treatment facility that provides inpatient psychiatric services to individuals under age 21 must attest, in writing, that the facility is in compliance with HCFA's standards governing the use of restraint and seclusion. This attestation must be signed by the facility director.

(1) A facility with a current provider agreement with the Medicaid agency must provide its attestation to the State Medicaid agency by July 21, 2001.

(2) A facility enrolling as a Medicaid provider must meet this requirement at the time it executes a provider agreement with the Medicaid agency.

(b) *Reporting of serious occurrences.* The facility must report each serious occurrence to both the State Medicaid agency and, unless prohibited by State law, the State-designated Protection and Advocacy system. Serious occurrences that must be reported include a resident's death, a serious injury to a resident as defined in § 483.352 of this part, and a resident's suicide attempt.

(1) Staff must report any serious occurrence involving a resident to both the State Medicaid agency and the State-designated Protection and Advocacy system by no later than close of business the next business day after a serious occurrence. The report must include the name of the resident involved in the serious occurrence, a description of the occurrence, and the name, street address, and telephone number of the facility.

(2) In the case of a minor, the facility must notify the resident's parent(s) or legal guardian(s) as soon as possible, and in no case later than 24 hours after the serious occurrence.

(3) Staff must document in the resident's record that the serious occurrence was reported to both the State Medicaid agency and the State-designated Protection and Advocacy system, including the name of the person to whom the incident was reported. A copy of the report must be maintained in the resident's record, as

well as in the incident and accident report logs kept by the facility.

§ 483.376 Education and training.

(a) The facility must require staff to have ongoing education, training, and demonstrated knowledge of—

(1) Techniques to identify staff and resident behaviors, events, and environmental factors that may trigger emergency safety situations;

(2) The use of nonphysical intervention skills, such as de-escalation, mediation conflict resolution, active listening, and verbal and observational methods, to prevent emergency safety situations; and

(3) The safe use of restraint and the safe use of seclusion, including the ability to recognize and respond to signs of physical distress in residents who are restrained or in seclusion.

(b) Certification in the use of cardiopulmonary resuscitation, including periodic recertification, is required.

(c) Individuals who are qualified by education, training, and experience must provide staff training.

(d) Staff training must include training exercises in which staff members successfully demonstrate in practice the techniques they have learned for managing emergency safety situations.

(e) Staff must be trained and demonstrate competency before participating in an emergency safety intervention.

(f) Staff must demonstrate their competencies as specified in paragraph (a) of this section on a semiannual basis and their competencies as specified in paragraph (b) of this section on an annual basis.

(g) The facility must document in the staff personnel records that the training and demonstration of competency were successfully completed. Documentation must include the date training was completed and the name of persons certifying the completion of training.

(h) All training programs and materials used by the facility must be available for review by HCFA, the State Medicaid agency, and the State survey agency.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: December 21, 2000.

Robert A. Berenson,

Acting Deputy Administrator, Health Care Financing Administration.

Dated: December 28, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 01–1649 Filed 1–19–01; 8:45 am]

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Federal Register

Monday,

January 22, 2001

Part XI

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 2, et al.

Federal Acquisition Regulation; Electronic and Information Technology Accessibility; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 10, 11, 12, and 39

[FAR Case 1999–607]

RIN 9000–AI69

Federal Acquisition Regulation; Electronic and Information Technology Accessibility

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Subsection 408(b) of Title IV of the Workforce Investment Act of 1998, (Pub. L. 105–220). Subsection 408(b) requires the FAR to be revised to incorporate standards developed by the Architectural and Transportation Barriers Compliance Board (also referred to as the ''Access Board'').

DATES: Interested parties should submit comments in writing on or before March 23, 2001 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999-607@gsa.gov

Please submit comments only and cite FAR case 1999–607 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 1999–607.

SUPPLEMENTARY INFORMATION:

A. Background

On August 7, 1998, the President signed into law the Workforce Investment Act of 1998, Public Law 105–220. Title IV of the Act is the Rehabilitation Act Amendments of 1998. Subsection 408(b) amended section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d). Subsection 508(a)(1) requires that when Federal departments or agencies develop, procure, maintain, or use Electronic and Information Technology (EIT), they shall ensure that the EIT allows Federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by other Federal employees. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal department or agency, have access to and use of information and data that is comparable to that provided to the public without disabilities. Comparable access is not required if it would impose an undue burden.

Subsection 508(a)(2)(A) required the Access Board to publish standards setting forth a definition of EIT and the technical and functional performance criteria necessary for accessibility for such technology by February 7, 2000. Subsection 508(a)(3) requires the Federal Acquisition Regulatory Council to revise the Federal Acquisition (FAR) to incorporate the Access Board's standards up to six months after the Access Board regulations are published. The Access Board published the final standards in the **Federal Register** at 65 FR 80500, December 21, 2000.

This proposed rule implements the Access Board's regulations by—

1. Including the definition of the term ''electronic and information technology'', a term added by the statute.

2. Incorporating the EIT Standards in acquisition planning, market research and when describing agency needs.

3. Adding a new Subpart 39.X to implement the Access Board's rule. Acquisitions of EIT will be required to meet the EIT accessibility standards unless an exception applies (*i.e.*, micro-purchase, national security system, acquired by a contractor incidental to a contract, located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; or would impose an undue burden (significant difficulty or expense)). The exemption for micro-purchases is made in recognition of the fact that almost all micro-purchases are made using the Governmentwide commercial purchase card. Government personnel, who are not warranted contracting officers, use the purchase card to purchase commercial-off-the-shelf items. Use of the purchase card makes it generally impractical to comply with the EIT accessibility standards unless all commercial-off-the-shelf products incorporate the standards. Manufacturers are continuing to develop products that comply with the EIT accessibility standards. It is expected that almost all products will comply with the standards within the next two years. Therefore, we have established a sunset date of January 1, 2003, for the micro-purchase exemption. Prior to that date, the Government will revisit the state of technology and the pace at which manufacturers have conformed to the required standards.

B. Executive Order 12866

The Access Board determined that their proposed rule that provides the accessibility standard is an economically significant regulatory action under E.O. 12866 with a cost over $100,000,000, and is a major rule under 5 U.S.C. 804. An Economic Assessment was accomplished and can be reviewed at http://www.access-board.gov/sec508/508index.htm. The Councils have determined that the assessment conducted by the Access Board provides an adequate Economic Assessment of both the Access Board rule and this change to the FAR. Accordingly, the Access Board's regulatory assessment meets the requirement of performing a regulatory assessment for this change to the FAR and no further assessment is necessary.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small businesses who choose to market their products to the Federal Government must ensure that their electronic and information technology supplies or services meet the substantive requirements of the Access Board's standards. Since this may result in increased costs of producing and selling their products, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and the analysis is summarized as follows:

The objective of this rule is to revise the FAR to improve the accessibility of electronic and information technology used by the Federal Government. The standards developed by the Access Board will affect Federal employees with disabilities as well as members of the public with disabilities who seek to use Federal electronic and

information technologies to access information. This increased access reduces barriers to employment in the Federal Government for individuals with disabilities. Failure of an agency to purchase electronic and information technology that complies with the standards promulgated under the Act may result in any individual with a disability filing a complaint seeking to enforce compliance with the standards.

This rule will apply to all contractors that manufacture, sell, or lease electronic and information technology supplies or services. For many contractors, this may simply involve a review of the supply or service with the standards to confirm compliance. For other contractors, these standards could require redesign of a supply or service. Based on fiscal year 1999 information from the Federal Procurement Data System, we estimate that there are approximately 11,000 contractors to which the rule will apply. Approximately 59 percent, or 6,500, of these contractors are small businesses.

Since the statute imposes private enforcement, where individuals with disabilities can file civil rights lawsuits, the Government has little flexibility for alternatives in writing this regulation. To meet the requirements of the law, we cannot exempt small businesses from any part of the rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 2, 7, 10, 11, 12, and 39 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–607), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 7, 10, 11, 12, and 39

Government procurement.

Dated: January 16, 2001.

Al Matera,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 7, 10, 11, 12, and 39 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 7, 10, 11, 12, and 39 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITION OF WORDS AND TERMS

2. In section 2.101, add in alphabetical order, the definition ''Electronic and information technology (EIT)'' to read as follows:

2.101 Definitions.

* * * * *

Electronic and information technology (EIT) has the same meaning as ''information technology'' except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide web sites, multimedia, and office equipment (such as copiers and fax machines).

* * * * *

PART 7—ACQUISITION PLANNING

3. In section 7.103, redesignate paragraphs (o) through (r) as (p) through (s); and add a new paragraph (o) to read as follows:

7.103 Agency–head responsibilities.

* * * * *

(o) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions that address Electronic and Information Technology Accessibility Standards (see 36 CFR part 1194) in proposed acquisitions (see 11.002(e)) and that these standards are included in requirements planning, as appropriate (see subpart 39.X).

* * * * *

PART 10—MARKET RESEARCH

4. In section 10.001, add paragraph (a)(3)(vii) to read as follows:

10.001 Policy.

(a) * * *

(3) * * *

(vii) Assess the availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see subpart 39.X).

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

5. In section 11.002, add paragraph (f) to read as follows:

11.002 Policy.

* * * * *

(f) In accordance with Section 508 of the Rehabilitation Act of 1973, (29 U.S.C. 794d), requiring activities must prepare requirements documents for electronic and information technology that comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see subpart 39.X).

PART 12—ACQUISITION OF COMMERICIAL ITEMS

6. Amend section 12.202 by adding a sentence to the end of paragraph (c) to read as follows:

12.202 Market research and description of agency need.

* * * * *

(c) * * * This includes requirements documents for electronic and information technology that comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see subpart 39.X).

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

7. Revise section 39.000 to read as follows:

39.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring—

(a) Information technology, including financial management systems, consistent with other parts of this regulation, OMB Circular No. A–127, Financial Management Systems, and OMB Circular No. A–130, Management of Federal Information Resources; and

(b) Electronic and information technology.

8. Add subpart 39.X, consisting of sections 39.X01 through 39.X04, to read as follows:

Subpart 39.X—Electronic and Information Technology

Sec.

39.X01 Scope of subpart.
39.X02 Definition.
39.X03 Applicability.
39.X04 Exceptions.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

39.X01 Scope of subpart.

This subpart implements Section 508 of the Rehabilitation Act of 1973, (29 U.S.C. 794d) and the Architectural and Transportation Barriers Compliance Board Electronic and Information

Technology (EIT) accessibility standards (36 CFR part 1194). When acquiring EIT, agencies must ensure that—

(a) Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities; and

(b) Members of the public with disabilities seeking information or services from an agency have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

39.X02 Definition.

Undue burden, as used in this subpart, means a significant difficulty or expense.

39.X03 Applicability.

Unless an exception at 39.X04 applies, acquisitions of EIT must meet the applicable accessibility standards at 36 CFR part 1194. When acquiring commercial items, an agency must comply with those accessibility standards that are available in the commercial marketplace in time to meet the agency's delivery requirements.

39.X04 Exceptions.

The requirements in 39.X03 do not apply to EIT that—

(a) Is purchased in accordance with subpart 13.2 (micro-purchases) prior to January 1, 2003. However, contracting officers and other individuals designated in accordance with 1.603–3 are encouraged to comply with the applicable accessibility standards to the maximum extent practicable;

(b) Is for a national security system;

(c) Is acquired by a contractor incidental to a contract;

(d) Is located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; or

(e) Would impose an undue burden on the agency.

(1) *Basis.* In determining whether compliance with all or part of the applicable accessibility standards in 36 CFR part 1194 would be an undue burden, an agency must consider—

(i) The difficulty or expense of compliance; and

(ii) Agency resources available to its program or component for which the supply or service is being acquired.

(2) *Undue burden documentation.* (i) The requiring official must document an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file.

(ii) When acquiring commercial items, an undue burden determination is not required to address standards that are not yet available in the commercial marketplace in time to meet the agency delivery requirements. The requiring official must document the nonavailability and provide the documentation to the contracting officer for inclusion in the contract file.

[FR Doc. 01–1657 Filed 1–19–01; 8:45 am]

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Federal Register

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Part XII

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards; Final Rule

Finding of No Significant Impact Energy Conservation Program for Consumer Products; Notice

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket Number EE–RM–98–440]

RIN 1904–AA77

Energy Conservation Program for Consumer Products: Central Air Conditioners and Heat Pumps Energy Conservation Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE or Department) has determined that revised energy conservation standards for central air conditioners and heat pumps will result in significant conservation of energy, are technologically feasible, and are economically justified. On this basis, the Department is today amending the existing energy conservation standards for central air conditioners and heat pumps.

EFFECTIVE DATE: The effective date of this rule is February 21, 2001.

ADDRESSES: A copy of the Technical Support Document (TSD) may be read at the DOE Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Copies of the TSD may be obtained from: the Codes and Standards Internet site at: http://www.eren.doe.gov/buildings/codes_standards/applbrf/central_air_conditioner.html or from the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121. (202) 586–9127.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–0854, e-mail: michael.e.mccabe@ee.doe.gov, or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: eugene.margolis@hq.doe.gov.

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I. Introduction

A. Consumer Overview

1. Background

The Department of Energy (DOE or the Department) is directed by the Energy Policy and Conservation Act to consider establishing minimum efficiency standards for various consumer products, including central air conditioners and heat pumps. Today's final rule adopts standards that are consistent with these requirements of the law. The Department is amending the almost ten year old minimum efficiency standards for new central air conditioners and heat pumps. These amended standards take into account a decade of technological advancements and will save consumers and the nation money, significant amounts of energy, and have substantial environmental and economic benefits.

When today's adopted standards go into effect, they will essentially raise the energy efficiency standards to 13 SEER for new central air conditioners and to 13 SEER/7.7 HSPF for new central air conditioning heat pumps (heat pumps). SEER, Seasonal Energy Efficiency Ratio, is the Department's measure of energy efficiency for the seasonal cooling performance of central air conditioners and heat pumps. HSPF, Heating Seasonal Performance Factor, is the Department's measure of energy efficiency for the seasonal heating performance of heat pumps. The standards will apply to products manufactured for sale in the United

States, as of January 23, 2006. The standard for split-system air conditioners, the most common type of residential air conditioning equipment, represents a 30 percent improvement in energy efficiency. For split-system heat pumps, the new standard would represent a 30 percent improvement in cooling efficiency and a 13 percent improvement in heating efficiency. The standard will also increase the cooling efficiency of single-package air conditioners and single-package heat pumps by 34 percent and the heating efficiency of single-package heat pumps by 17 percent. Finally, the Department is not yet adopting new standards for some products to ensure that more efficient versions remain available for niche applications. The Department has determined that the new standards are the highest efficiency levels that are technically feasible and economically justified as required by law. Therefore, the Department is amending the energy conservation standards for residential central air conditioners and heat pumps.

2. Central Air Conditioner and Heat Pump Features

The amended efficiency levels can be met by central air conditioner and heat pump designs that are already available in the market. We fully expect variations of these models to exist under the new standards, offering all the features and utility that are found in currently available products.

3. Consumer Benefits

Table I.1 summarizes the ''characteristics'' of today's typical central air conditioners and heat pumps. Table I.2 presents the implications for the average consumer of the standards becoming effective in 2006.

TABLE I.1.—CHARACTERISTICS OF TODAY'S TYPICAL CENTRAL AIR CONDITIONERS AND HEAT PUMPS [1]

	Split system air conditioner	Split system heat pump	Single package air conditioner	Single package heat pump
Average Installed Price	$2,236	$3,668	$2,607	$3,599
Annual Utility Bill [2]	$189	$453	$189	$453
Life Expectancy (years)	18.4	18.4	18.4	18.4
Energy Consumption per year (kWh)	2,305	6,549	2,305	6,549

[1] ''Typical'' equipment have cooling and heating efficiencies of 10 SEER and 6.8 HSPF, respectively.
[2] Utility bill pertains to the energy cost of operating the air conditioner or heat pump.

TABLE I.2.—IMPLICATIONS OF NEW STANDARDS FOR THE AVERAGE CONSUMER

	Split system air conditioner	Split system heat pump	Single package air conditioner	Single package heat pump
Year Standard Comes into Effect	2006	2006	2006	2006
New Average Installed Price	$2,571	$4,000	$3,032	$4,034
Estimated Price Increase	$335	$332	$425	$435
Annual Utility Bill Savings	$42	$70	$42	$70
Average Net Saving over Equipment Life	$113	$372	$29	$353
Energy Savings per Year (kWh)	532	1081	532	1081

The most typical air conditioner (*i.e.,* split system air conditioners which comprise approximately 65 percent of today's central air conditioning and heat pump market) has an installed price of $2,236 and an annual utility cost of $189. In order to meet the 2006 standard, the Department estimates that the installed price of a typical air conditioner will be $2,571, an increase of $335. This price increase will be offset by an annual energy savings of about $42 on the utility bills. The most typical heat pump (*i.e.,* split system heat pump) currently has an installed price of $3,668 and an annual utility cost of $453. In order to meet the 2006 standard, the Department estimates that the installed price of a typical heat pump will be $4,000, an increase of $332. This price increase will be offset by an annual energy savings of about $70 on the utility bills.

The Department recognizes that most consumers pay energy prices that are higher or lower than the ''typical'' consumer and operate their equipment more or less often. Consequently, the Department has investigated the effects of the different energy prices across the nation and different air-conditioning usage patterns. The Department estimates that 61 percent of all consumers purchasing a new typical air conditioner will either save money or will be negligibly impacted as a result of the 2006 standard. In the case of a new typical heat pump, 94 percent of all consumers either save money or will be negligibly impacted.

The Department also investigated how these standards might affect low income consumers. On average, the Department estimates that it is likely that low income air conditioner and heat pump consumers will also save money as a result of the standard.

4. National Benefits

The standards will provide benefits to the nation. DOE estimates the standards will save approximately 4.2 quads of energy over 25 years (2006 through 2030). This is equivalent to all the energy consumed by nearly 26 million American households in a single year. We also estimate this standard will have a net benefit to the nation's consumers of $1 billion over the same period. In 2020, the standards will avoid the construction of five 400 megawatt coal-fired plants and thirty-four 400 megawatt gas-fired plants. These energy savings will result in cumulative greenhouse gas emission reductions of approximately 33 million metric tons (Mt) of carbon, or an amount equal to that produced by approximately 3 million cars every year. Additionally, air pollution will be reduced by the elimination of approximately 94 thousand metric tons of nitrous oxides (NO_X) from 2006 through 2020.

B. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended by the National

Energy Conservation Policy Act, Pub. L. 95–619, by the National Appliance Energy Conservation Act, Pub. L. 100–12, by the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, and by the Energy Policy Act of 1992, Pub. L. 102–486 [1] created the Energy Conservation Program for Consumer Products other than Automobiles. The consumer products subject to this program (often referred to hereafter as ''covered products'') include central air conditioners and heat pumps.

Under the Act, the program consists essentially of three parts: testing, labeling, and Federal energy conservation standards.

The National Appliance Energy Conservation Act of 1987 (NAECA) prescribed initial Federal energy conservation standards for central air conditioners and heat pumps. EPCA Section 325(d), 42 U.S.C. 6295(d). The Act specifies that the Department is to review the standards January 1, 1994. EPCA Section 325(d)(3)(A), 42 U.S.C. 6295(d)(3)(A).

Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. EPCA Section 325(o)(2)(A), 42 U.S.C. 6295(o)(2)(A).

Section 325(o)(2)(B)(i) provides that before DOE determines whether a standard is economically justified, it must first solicit comments on a proposed standard. After reviewing comments on the proposal, and before it adopts a standard, DOE must then determine whether the benefits of the standard exceed its burdens, based, to the greatest extent practicable, on a weighing of the following seven factors:

''(i) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(ii) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(iii) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(iv) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(v) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(vi) The need for national energy conservation; and

(vii) Other factors the Secretary considers relevant.''

In addition, section 325(o)(2)(B)(iii) establishes a rebuttable presumption of economic justification in instances where the Secretary determines that ''the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure * * *.'' The rebuttable presumption test is an alternative path to establishing economic justification.

C. Background

The existing standards for residential central air conditioners and heat pumps have been in effect since 1992. As described above, the descriptor for air conditioner and heat pump cooling efficiency is SEER and the descriptor for heat pump heating efficiency is HSPF. The current central air conditioner and heat pump efficiency standards are as follows:

—Split system air conditioners and heat pumps—10 SEER/6.8 HSPF
—Single package air conditioners and heat pumps—9.7 SEER/6.6 HSPF

On September 8, 1993, DOE published an Advance Notice of Proposed Rulemaking (ANOPR) announcing the Department's intention to revise the existing central air conditioner and heat pump efficiency standard. 58 FR 47326. During a workshop on June 30, 1998, we presented for comment an analytical framework for the central air conditioner and heat pump standards rulemaking. The analytical framework described the different analyses to be conducted, the method for conducting them, the use of new spreadsheets, and the relationship of the various analyses. On November 24, 1999, DOE published a Supplemental ANOPR. 64 FR 66306. On October 5, 2000, DOE published a Notice of Proposed Rulemaking (NOPR or proposed rule). 65 FR 59590. The energy efficiency standards proposed for residential central air conditioners and central air conditioning heat pumps (heat pumps) were as follows:

—Split system and single-package air conditioners—12 SEER
—Split system and single package heat pumps—13 SEER/7.7 HSPF
—Through-the-Wall air conditioners and heat pumps—11 SEER/7.1 HSPF.

In addition to the increase proposed in SEER and HSPF, the Department requested comments on a proposal to adopt a standard for steady-state cooling efficiency, EER.[2] The proposal on EER was designed to ensure more efficient operation at high outdoor temperature, during periods when electricity use by air conditioners is at its peak.

The proposed rule provided additional background information on the current standards, the history of previous rulemakings and the procedures, interpretations and policies which guide the Department in developing new efficiency standards, which are set forth as the Process Improvement Rule. 61 FR 36974. A public hearing was held in Washington, DC on November 16, 2000, to hear oral views, data and arguments on the proposed rule.

II. General Discussion

A. Technological Feasibility

1. General

There are central air conditioners and heat pumps in the market at all of the efficiency levels prescribed in today's final rule. The Department, therefore, believes all of the efficiency levels adopted by today's final rule are technologically feasible.

2. Maximum Technologically Feasible Levels

Pursuant to section 325(p)(2) of the Act, and as discussed in the proposed rule, the Department determined that 18 SEER is the maximum technologically feasible (Max Tech) level for cooling efficiency for all product classes and capacities covered by this rulemaking. 65 FR 59593. The Max Tech level for heating efficiency, is 9.4 HSPF which is the highest HSPF rating currently available in residential heat pumps.

B. Energy Savings

1. Determination of Savings

The Department forecasted energy savings through the use of a national energy savings (NES) spreadsheet as discussed in the proposed rule. 65 FR 59590, 59593 (October 5, 2000). The

[1] Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, the National Appliance Energy Conservation Act, the National Appliance Energy Conservation Amendments of 1988, and the Energy Policy Act of 1992, is referred to in this notice as EPCA, or the ''Act.'' Part B of Title III is codified at 42 U.S.C. 6291 *et seq.* Part B of Title III of the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act only, is referred to in this notice as the National Energy Conservation Policy Act.

[2] EER, Energy Efficiency Ratio, is a steady-state measure of energy efficiency which measures efficiency at a prescribed outdoor temperature (95 °F), and is one of the test conditions in the Department's test procedure used to develop the SEER.

spreadsheets and assumptions upon which the results of today's final rule is based are unchanged.

2. Significance of Savings

As discussed in the proposed rule, section 325(o)(3)(B) of the Act prohibits the Department from adopting a standard for a product if that standard would not result in ''significant'' energy savings. The energy savings for the standard levels we are adopting today are non-trivial—indeed they are substantial—and therefore we consider them ''significant'' within the meaning of section 325 of the Act.

C. Rebuttable Presumption

The National Appliance Energy Conservation Act established new criteria for determining whether a standard level is economically justified. Section 325(o)(2)(B)(iii) of the Act states:

''If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy * * * savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.''

If, according to the test procedure, the increase in initial price of an appliance due to a conservation standard would repay itself to the consumer in energy savings in less than three years, then we presume that such standard is economically justified. This presumption of economic justification can be rebutted upon a proper showing.

The standard levels we are adopting today do not satisfy the criteria set forth above. Therefore, we cannot presume them to be economically justified and have performed additional analysis to support the Secretary's determination that they are indeed economically justified.

D. Economic Justification

As noted earlier, Section 325(o)(2)(B)(i) of the Act provides seven factors to be evaluated in determining whether a conservation standard is economically justified.

1. Economic Impact on Manufacturers and Consumers

We considered the economic impact on manufacturers and consumers as discussed in the proposed rule. 65 FR 59590, 59593 (October 5, 2000).

2. Life-cycle-costs

We considered life-cycle-costs as discussed in the proposed rule. 65 FR 59590, 59594 (October 5, 2000). The installed price and operation and maintenance costs were calculated for a range of consumers around the nation to estimate the range in life cycle cost benefits that consumers would expect to achieve due to new standards.

3. Energy Savings

While significant conservation of energy is a separate statutory requirement for establishing an energy conservation standard, the Act requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from revised standards.

4. Lessening of Utility or Performance of Products

This factor cannot be quantified. In establishing classes of products, the Department has attempted to eliminate any degradation of utility or performance in the products covered by today's final rule. Attributes that affect utility include the product's ability to cool and dehumidify. In some applications, noise levels may also be an aspect of utility. Product size or configuration can also be considered utility if a change in size would cause the consumer to install the product in a location or in a manner inconsistent with the consumer's preferences.

5. Impact of Lessening of Competition

It is important to note that this factor has two parts; on the one hand, it assumes that there could be some lessening of competition as a result of standards; and on the other hand, it directs the Attorney General to gauge the impact, if any, of that effect.

In order to assist the Attorney General in making such a determination, the Department provided the Attorney General with copies of the proposed rule and the Technical Support Document for review. The Attorney General's response is discussed in section V.D.5 below, and is reprinted at the end of the rule.

6. Need of the Nation To Conserve Energy

The Secretary recognizes that energy conservation benefits the Nation in several important ways. Enhanced energy efficiency improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts of energy production.

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. EPCA Section 325(o)(2)(B)(i)(VI), 42 U.S.C. 6295(o)(2)(B)(i)(VI).

Under this factor, we considered the potential improvement to the reliability of the electrical system. Recent summertime electric power outages in various regions of our country resulted in disruption of many peoples' lives and businesses. The schedule contained in the Act called for the Department to revise the standards for central air conditioners and heat pumps by 1994, to be effective in 1999. For reasons explained in the proposed rule and ANOPR, promulgation of many standards including those for central air conditioners and heat pumps was delayed.

While central air conditioning accounts for about 10 percent of residential electricity consumption, it can account for several times this amount during peak hours on hot summer days, when electricity reliability is most strained. A 30 percent improvement in air conditioner efficiency would reduce the nation's total annual electricity use by approximately 2 percent after it was fully phased in. However, the same efficiency improvement would provide a greater percentage reduction in peak loads, reducing the prospect of brownouts and price spikes. These peak load reductions are critical given that the conditions leading to grid instability can occur well before peak demand even equals supply.

The Final Report [3] by the team of experts convened by the Secretary to investigate the electric power problem included the recommendation to increase the energy efficiency of central air conditioners as one means for enhancing reliability. This recommendation led the Secretary to put this rulemaking on the fast track and to advance the publication of today's final rule for central air conditioners and heat pumps. Thus, the Department has considered effects of the rule on electric power system reliability.

III. Methodology

As discussed in the proposed rule, the Department developed new analytical tools for this and other recent rulemakings. The first tool was a

[3] ''Report of the U.S. Department of Energy's Power Outage Study Team: Findings and Recommendations to Enhance Reliability from the Summer of 1999'', March 2000.

spreadsheet that calculates life-cycle-cost (LCC) and payback period. The second calculates national energy savings and national net present value (NPV). The Department also completely revised the methodology used in assessing manufacturer impacts including the adoption of the Government Regulatory Impact Model (GRIM). Additionally, DOE developed a new approach using the National Energy Modeling System (NEMS) to estimate impacts of air conditioner energy efficiency standards on electric utilities and the environment.

In order to estimate production costs for this rulemaking, we used an efficiency level approach, with cost data provided by the Air Conditioning and Refrigeration Institute (ARI) and through our own reverse engineering methods. The ARI cost data presented the minimum, mean, and maximum cost estimates for the sample of ARI members who participated. The data covered each product class at each efficiency level through 15 SEER, and was expressed relative to the base cost for each manufacturer. The reverse engineering methodology, conceived as a way to validate the ARI data, analyzed seventy-one samples, mostly selected by manufacturers, using design data provided by manufacturers. We physically examined three of these models. In refining our results, we reviewed our detailed cost estimates for split air conditioners with a major manufacturer.

The benefits of reverse engineering include the transparency of the methods, data, and assumptions used to produce the estimates, and the insights gained into the design options used to achieve the different efficiency levels. The ARI data provides none of these benefits, but does draw on the considerable expertise of the manufacturers involved in producing the underlying estimates describing all of the products on the market. One benefit of the reverse engineering analysis is that results are expressed in absolute costs instead of relative costs. Absolute costs are needed to represent production costs at the minimum efficiency level and are helpful in representing the production costs at higher efficiency levels.

Regarding the analytical methodology, the Department continues to use the spreadsheets and approaches explained in the proposed rule. 65 FR at 59594–59597. We have applied them to develop the analysis further in this final rule. We added new analysis based on the manufacturing cost estimates that we had derived through reverse engineering techniques. Also, because its results were similar to those derived using our 18.4-year equipment life assumption, we are no longer considering the 14-year equipment lifetime scenarios in the economic analysis. Finally, the emissions reductions analysis now also estimates the discounted value of cumulative emission reductions.

IV. Discussion of Comments

Since we opened the docket for this rulemaking, we have received over 800 comments from a diverse set of interested parties, including manufacturers and their representatives, states, energy conservation advocates, heating and air-conditioning contractors, consumers, electric utilities and others. The comments addressed the burdens and benefits associated with more stringent standards, aspects of our analysis, the merits of the different trial standard levels and standard options we considered, and the DOE rulemaking process. Many comments raised issues that we substantially addressed in the proposed rule and Supplementary ANOPR. Comments received during the most recent comment period are addressed below, and some previous comments are revisited.

A. Burdens and Benefits

This section discusses comments we received on the burdens and benefits associated with more stringent minimum efficiency standards, organized into the seven factors that the Secretary considers as a basis for deciding whether a standard level is economically justified.

1. Economic Impacts

a. *Economic Impacts on Manufacturers.* According to our manufacturer impact analysis, more stringent efficiency standards burden most manufacturers by causing them to make new investments in capacity, research and development, and testing. We also expect most manufacturers to experience lower profitability and sales volumes for several years after the adopted standards become effective. Some manufacturers in our analysis benefit under more stringent standards.

ARI characterizes the financial burdens on the industry overall as severe. They also assert that the hydrochloroflourocarbons (HCFC) phaseout results in cumulative burdens. (ARI, No. 100 at pp. 6 and 13). Some manufacturers noted that EER and thermal expansion valve (TXV) requirements would add to the burden. (York, No. 90, at pp. 4–5). The Natural Resources Defense Council (NRDC) questions whether we considered that reverse engineering-based prices reduce impacts through price elasticity effects, but noted that industry impacts did not seem to change across trial standard levels, and the Oregon Office of Energy (OOE) believes that we have overstated manufacturer impacts since they are already making investments in new technologies to help them improve product efficiency. (NRDC, No. 88 at p. 15; and OOE, No. 84 at p.5).

The reduction in industry net present value does increase with increasing standard levels, particularly since we consider it more likely that the Roll-up [4] scenario will occur under higher standard levels. Individual manufacturers themselves discussed their situations with us at length, and we have incorporated the information they presented to us into our manufacturer impact analysis. In adopting this rule, we have assumed that the Roll-up scenario is the most likely outcome resulting from a new 13 SEER standard for all product classes. We did consider the change in sales volumes driven by changes in the underlying cost assumptions.

Many comments described what they consider disproportionate impacts on manufacturers of niche products. Those comments are discussed in Section IV.4 below.

The Department has considered the manufacturer burdens as described in the manufacturer impact analysis of the TSD in adopting the new standard. These include cumulative burdens. It also considers the extent to which the differences among efficiency scenarios change the implications of more stringent standards.

b. *Economic Impacts on Consumers.* Many comments mention the economic burdens that more stringent efficiency standards can place on consumers who are sensitive to increases in first cost. Many noted that our decision should consider burdens on consumers caused by long median payback periods. Some comments emphasized that disproportionate impacts on low income consumers due to an expected increase in installed price would reduce the number of consumers who would be able to afford new air conditioners. Some comments suggested that this effect could increase health problems and deaths. The Mercatus Center stated that the Department believed consumers pass up energy efficient equipment because they are misinformed about

[4] The Roll-up scenario assumes that the proportion of equipment with efficiency ratings above the new standard level will not increase compared to their proportion today.

operating costs, therefore the Department should construct a program to correct this deficiency. (ARI, No. 100 at pp. 2 and 5; American Public Power Association (APPA), No. 113 at p. 2; Manufactured Home Institute (MHI), No. 99 at p. 1; Lennox, No. 91 at p. 3; Consumer Federation of America (CFA), No. 110 at p. 1; Nebraska Public Power District (NPPD), No. 109 at p. 2; National Association of Home Builders (NAHB), No. 94 at p. 1; Nordyne, No. 101 at p. 2; Trane, No. 93 at p. 4; York, No. 90 at pp. 4–5; and Mercatus Center, No. 115 at pp. 18–19).

CFA considers lower energy bills a benefit and would support regional standards and public assistance programs to mitigate long payback periods and disproportionate impacts on consumers. (CFA, No. 110 at p. 2).

Many comments express the belief that, for various reasons, we either underestimated or overestimated economic impacts on consumers. Those comments are addressed in Section IV.B. below.

We recognize that increases in first cost and long payback periods are generally considered burdens on consumers. Based on the reverse engineering derived manufacturing cost estimates, however, our analysis shows that, at the adopted standard levels, the payback period is shorter than the life of the equipment. This means that over the life of the product, any increase in price will be paid back to the average consumer. Thus, the new efficiency standards should provide the average consumer with a long term economic benefit. Also, we have examined impacts on low income consumers, and found them to benefit overall. Consumers concerned about potential health effects should note that assistance programs are already available to assist them with their air conditioning purchases, and that room air conditioners will continue to be available when cooling in individual rooms could mitigate their health concerns.

2. Life-Cycle Costs

ARI, The Trane Company (Trane), American Electric Power (AEP), Mercatus Center, Southern Company, Dominion Virginia Power (Dominion), and Edison Electric Institute (EEI) asserted that the percent of consumers realizing life-cycle-cost savings at the standard levels issued in the proposed rule were too low and did not warrant an increase in the minimum efficiency standard. (ARI, No. 100 at p. 2; Trane, No. 93 at p. 4; AEP, No. 83 at p. 1; Mercatus Center, No. 115; Southern Company, No. 96 at p. 2; Dominion, No. 103 at p. 3 and Transcript No. 73 at pp. 50–51; and EEI, Transcript No. 73 at pp. 176–178). Carrier Corp. asserted that there were too many consumers incurring life-cycle-cost increases at 12 SEER. (Carrier, No. 92 at p. 5). In contrast, the American Council for an Energy-Efficient Economy (ACEEE), the Alliance to Save Energy (ASE), the Pacific Gas and Electric Company (PG&E), and NRDC argued that the percent of consumers realizing life-cycle-cost savings from a particular standard level is not the appropriate measure for establishing an updated efficiency standard. Because air-conditioning use is highly dependent on climatic conditions and because these are national standards, it is to be expected that some consumers in the Northern part of the U.S. will realize net costs from an increased standard but will be offset by consumers in the Southern part of the U.S. who will realize life-cycle cost savings from more efficient air-conditioning equipment. Due to this disparity, they argue it is better to base the standard on national average life-cycle-cost results. (ACEEE, No. 104 at p. 13; ASE, No. 81 at p.9; PG&E, No. 104 at p. 5; and NRDC, No. 88 at pp. 19–21).

EPCA requires the Department to consider life-cycle-cost as one of the seven factors in determining economic justification. In determining economic justification, the Secretary must determine whether the benefits of a standard exceed the burdens. Life-cycle-cost is just one of the factors to be considered and there is no mathematical formula for weighing the benefits and burdens of the various factors. There are also no mathematical thresholds for life-cycle-cost as implied by EEI and ACEEE. (EEI, Transcript No. 73 at p. 177; and ACEEE, Transcript No. 73 at p. 182). The Department notes that under the standards in today's rule, consumers on average will have lower life-cycle costs. Furthermore, it appears that EPCA, in requiring DOE to set national standards that maximize energy savings for appliances where there will obviously be regional differences in usage and energy costs, contemplated that the level of life cycle cost savings would vary among consumers.

We have quantified the distribution of life cycle costs among consumers and have considered it, along with other information, in the weighing of the benefits and burdens of each standard level we assessed.

3. Energy Savings

ARI states that the Department overestimated the energy savings realized from efficiency standards by basing the savings on source energy consumption at the power plant, rather than site energy consumption at the household or commercial building. (ARI, No. 100 at p. 11). While neither stating that the energy savings estimated by the Department were too great or too low, ASE claims that 70 billion kWh would be saved from a 13 SEER standard coupled with a minimum EER requirement of 11.6 and mandatory use of TXVs. (ASE, No. 81 at p. 12). ACEEE also claims that significant national energy savings will be realized from a 13 SEER standard, an 11.6 minimum EER requirement, mandatory use of TXVs, and an HSPF standard of 7.9.

NAECA prescribes that consumer energy savings be evaluated based on site rather than source energy consumption. However, the Department believes national energy savings evaluated at the source reflects a more accurate representation of the energy consumption being avoided from a standard. Evaluating energy at the source takes into account the efficiency of the generation source as well as the transmission and distribution of the electricity. The Department accounts for site energy consumption in its analysis of consumer life-cycle-cost impacts. With regard to the magnitude of the energy being saved from a standard, the Department is confident in its National Energy Savings (NES) spreadsheet model to forecast the source energy savings realized from all standard levels, including a 13 SEER standard. Discussions with regard to minimum EER standards and TXV requirements are presented later in this Chapter.

4. Lessening of Utility or Performance of Products

Comments regarding lessening of utility related mainly to the impacts that more stringent standards may have on the availability of niche products and some products that are not typically considered ''niche''. Most comments stated that those products face size constraints that they will find difficult, if not impossible, to conform to under more stringent standards. That result could lead to the removal of the products from the market, or to equipment prices that are higher than the market would be able to sustain. (Friedrich, No. 116 at p. 1; Unico, No. 117 at pp. 1–2; Carrier, No. 92 at p. 8; Lennox, No. 91 at p. 7; Trane, No. 93 at p. 18; Mitsubishi, No. 87 at p. 1; Armstrong, No. 86 at pp. 1–3; and Fujitsu, No. 85 at p. 1).

We recognize that contractors and consumers do take product size into account when making a purchase, and that size constraints can make it more

difficult for manufacturers to offer equipment meeting performance needs. This is true for niche products, which we discuss elsewhere, as well as for conventional products. The same was the case when the 10 SEER minimum standards were agreed upon and established in 1987. Manufacturers can attempt to prevent size constraints from degrading performance or utility by offering smaller 13 SEER equipment than they typically offer today. The technical options for achieving that objective include existing and emerging technologies. Therefore, we do not consider it likely that products will be unavailable that meet the new 13 SEER standard, and have substantially the same capacities, performance and range of sizes as today's products.

If the size of 13 SEER equipment does not generally decrease under new standards, some consumers may be required to incur additional installation expense to accommodate the larger equipment. We discuss this in more depth in Section IV.B.2.e. The Department did consider that possibility when adopting today's standards.

Along a separate line, Southern Company is concerned that higher efficiency equipment will reduce dehumidification, which is an important attribute in moderate, humid, climates. (Southern Company, No. 96 at pp. 4–5). The equipment's ability to dehumidify is a function of its design and not necessarily its efficiency. As we stated in the proposed rule, evidence indicates that sensible heat ratios in high efficiency equipment are similar to those at the baseline. We trust that under a more stringent standard, manufacturers will seek to serve the needs of the market with products that dehumidify properly.

5. Impact of Lessening of Competition

The Department of Justice (DOJ) and others commented that the more stringent standards contained in the proposed rule could lessen competition. (DOJ, No. 112; Trane, No. 93 at p. 12; and EEI, No. 80 at p. 8). Aspects of our manufacturer impact analysis support that conclusion. We discuss the DOJ concerns in more depth in Section V.D.5. The letter from the Department of Justice is attached in the Appendix of this rulemaking. We recognize that the standard levels we are adopting could accelerate the consolidation trend among major manufacturers. However, as discussed in the manufacturer impact analysis, we do not expect that any manufacturer or group of manufacturers will be able to use the standards as an opportunity to consolidate their market power. (*See* TSD, Chapter 8). Therefore, we believe that competition will remain vigorous under the adopted standard, and any lessening of competition that does occur will not result in price increases or loss of choice and utility for consumers.

Other comments note that a large fraction of today's models would not be able to meet more stringent standards. (AEP, No. 83 at p. 1; Dominion, No. 68 at p. 2; ARI, No. 100 at p. 11; and EEI, No. 80 at p. 8). In the manufacturer impact analysis, we considered that manufacturers will have to design new products to meet any increased standard level. Furthermore, products are technologically feasible through 18 SEER. So, while many of today's models may not be available under more stringent standards, we fully expect variations of those models to be available, offering all the features and utility of currently available products.

6. Need of the Nation To Conserve Energy

Of the approximately 800 comments we have received, the vast majority were from individuals and organizations who made similar claims regarding the benefits that would be associated with a 13 SEER standard and an EER standard for air conditioners and heat pumps. These benefits included savings for consumers, avoided emissions and electrical capacity, and the reduced occurrence of brownouts and blackouts. Although our analysis is not able to substantiate many of these claims, all of these issues relate to the need of our nation to conserve energy. We recognize that a broad cross-section of citizens and organizations are concerned about these issues and in the potential for more stringent standards to address them.

We discuss more specific comments related to economic benefits and electric system capacity in other sections of this chapter. In this section, we discuss the comments we received regarding environmental benefits.

ASE claims that a 13 SEER standard coupled with an 11.6 EER minimum standard and a mandatory TXV requirement would yield environmental benefits in the form of the following air-borne emission reductions: 15 million metric tons of carbon, 40,000 tons of nitrous oxides, and 200,000 tons of sulfur dioxide in 2020. Northeast Energy Efficiency Partnership (NEEP) also states that significant carbon dioxide emission reductions could be achieved with a 13 SEER standard relative to a 12 SEER standard. (ASE, No. 81 at p. 12; and NEEP, No. 118 at p. 2). The Northwest Power Planning Council (NWPPC) states that the Department used the average heat rate of avoided plants rather than the heat rate of operating plants displaced by the efficiency standards when determining emission reductions. As a result, NWPPC claims that the emissions mitigated by the standards were underestimated (NWPPC, No. 76 at p. 6).

National energy savings realized from central air conditioner and heat pump efficiency standards are directly translated into reduced air-borne emissions at electric power plants. The magnitude of the emission reductions are determined through the use of NEMS–BRS [5], a version of NEMS used for appliance standards analyses. NEMS–BRS is based on the AEO2000 version with minor modifications. NEMS offers a sophisticated picture of the effect of standards since its scope allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole. Thus, although the Department agrees with ASE that emissions will be avoided from new air conditioner and heat pump efficiency standards, the Department believes that the magnitude of those emission reductions are best estimated with NEMS–BRS. In the case of SO_2, the Clean Air Act Amendments of 1990 set an emissions cap on all power generation. The attainment of this target, however, is flexible among generators and is enforced by applying market forces, through the use of emissions allowances and tradable permits. As a result, accurate simulation of SO_2 trading tends to imply that physical emissions effects will be zero because emissions will always be at, or near, the ceiling. This fact has caused considerable confusion in the past. We do not believe there is a potential benefit in reductions in SO_2 emissions from electricity savings as long as emissions of SO_2 are at or near the emission ceilings. With regard to the issue of heat rates, contrary to NWPPC's assertion, the Department did use the heat rates of displaced power plants in determining the emission reductions resulting from efficiency standards.

7. Other Factors

With regard to other factors, the issue of electric system reliability attracted numerous comments. EEI, AEP, and

[5] EIA approves use of the name NEMS to describe only an AEO version of the model without any modification to code or data. Because our analysis entails some minor code modifications and the model is run under various policy scenarios that deviate from AEO assumptions, the name NEMS–BRS refers to the model as used here. For more information on NEMS, please refer to the National Energy Modelling System: An Overview 1998. DOE/EIA–0581 (98), February, 1998. BRS is DOE's Office of Building Research and Standards.

Dominion Virginia Power stated many changes are occurring in the electric utility industry at the same time electric load is continuing to grow. As a result, the overall effect of any end-use efficiency measure, such as an air conditioner and heat pump standard, is likely small. (EEI, Transcript, No. 73 at p. 224; AEP, No. 83 at p. 4; and Dominion, No. 103 at p. 4). Southern Company argued that once a standard is established, new load growth forecasts incorporating its effects will likely be made and investment decisions will be accordingly adjusted. In other words, since the effects of this rule do not become noticeable until five or more years after its 2006 effective date, utilities will have ample time to plan and construct capacity in response to expectations of load growth, reserve margin, and, where competition has become normal practice, to prices. (Southern Company, Transcript No. 73 at p. 241). Synapse Energy Economics (Synapse), along with ACEEE, NWPPC, NRDC, ASE, and PG&E noted that there is a real issue in meeting increased demand, due in large part to increased air conditioner usage. Synapse also notes that conventional assumptions about the ability of the power system to meet growing load are increasingly coming into question as the barriers to system expansion are not inadequate price incentives or unwillingness to invest, but rather siting (of generation, transmission, and distribution capability), environmental, and other constraints. (Synapse, Transcript No. 73 at p. 243; ACEEE, No. 104 at pp. 13–15; NWPPC, Transcript No. 73 at p. 253; NRDC, No. 88 at pp. 4 and 6; ASE, No. 81 at pp. 7 and, 10; and PG&E, Transcript No. 73 at p. 251).

In a March 2000 final report, the DOE Power Outage Study Team described several power outages that occurred in the summer of 1999. During early July, a heat storm affected much of the East from New England down past the Mid-Atlantic causing many problems. From July 3 through 8, service was interrupted to a total of 110,000 Long Island Power Authority (LIPA) customers for varying periods. During that period, two new system peak loads were set and LIPA activated its Commercial Peak Reduction Program, appealed to its other large customers to voluntarily curtail their use of electricity and reduced system-wide voltage by five percent. Many organizations and government offices responded by closing early or cutting back on their electricity use. On July 6, the eastern half of the Pennsylvania, New Jersey, Maryland Interconnection grid experienced sudden and steep voltage declines as an all-time-high peak load was recorded. The integrity of the system was maintained by reducing voltage, curtailing contractually interruptible customers and appealing for voluntary load reductions. On that same day, Delmarva Power and Light had a capacity shortfall that resulted in rotating outages from 10:30 a.m. until 7:30 p.m. affecting 138,000 customers. In the Chicago area on July 30, Commonwealth Edison set all-time-peak demand during a period of intense heat and humidity. Resulting system failures caused more than 100,000 customers temporary losses of power for up to several hours. The summer of 2000 has seen similar types of problems in the state of California.

Outages such as these can cost millions of dollars per hour depending on which and how many customers are affected. Although we recognize that system adequacy may only play a small part in ensuring system reliability, the Department is convinced, especially due to recent expansion shortfalls in the Western part of the U.S., that system reliability is an important issue which can be addressed, to some degree, by increased air conditioner and heat pump standards. The impacts of standards could be potentially beneficial in lowering overall system stress and postponing necessary investment. This is especially important since annual investment in transmission has roughly halved since the levels of the 1970's [6]. The potential benefit of air conditioner and heat pump efficiency improvements is a factor in establishing the standards being issued today. In addition, the Department is continuing to establish national equipment standards in the form of the current efficiency descriptors (i.e., SEER and HSPF), as discussed below, it will examine ways to provide additional credit in the test procedure for EER rather than using such additional measures as minimum EER standards and mandatory TXV requirements.

B. Analysis and Assumptions

1. Engineering Analysis

a. Reliance on ARI and Reverse Engineering Cost Estimates. The Department considered primarily two sets of data for relating the manufacturing costs of current baseline (minimum SEER) equipment to the manufacturing costs of higher efficiency equipment which would become baseline equipment under new standards: one source provided by the industry through ARI and the other source determined from the Department's reverse engineering analysis. In the proposed rule, our analyses and conclusions relied heavily on the ARI manufacturing cost estimates, and less on the reverse engineering cost estimates.

However, several comments questioned the validity of the ARI results and recommended we rely more heavily, if not exclusively, on the reverse engineering estimates. They cited various reasons, including retail price information that matched the ARI Mean, the greater transparency of the reverse engineering process and results, and the natural tendencies of manufacturers to overestimate the costs of complying with more stringent standards. The same comments even suggest that the reverse engineering cost estimates may themselves be overestimates. (OOE, No. 84 at p. 3; NRDC, No. 88 at pp. 3–15; ASE, No. 81 at p. 11; and NEEP, No. 188 at p. 3).

Other comments supported the use of the ARI data, citing the experience of the manufacturers and apparent flaws in the assumptions and methodology used in the reverse engineering analysis, which was designed as a validation tool. These perceived flaws included the small number of tear-downs performed. However, ARI and some of its members recognize that the reverse engineering results fall within their range and seem to validate their data to some extent. (ARI, Transcript No. 14 at p. 42, No. 48 at p. 2 and No. 100 at p. 9; Carrier, No. 92; Trane, No. 93; and Lennox, No. 91 at p. 4).

While we recognize the expertise of ARI's members related to projecting the cost of producing central air conditioning equipment, we have several concerns with the ARI data. First, ARI has not satisfactorily explained why their cost data at 12 SEER and higher levels display such a large range between the minimum and maximum values. We are convinced that, in order to remain competitive, manufacturers will have to adopt relatively similar paths to increase the efficiency of their baseline products to meet the new minimum standards. This will tend to result in actual costs that are closer to the ARI Minimum values than to the ARI Mean values.

We are also concerned with how closely the data on recent Wisconsin retail prices, submitted by ACEEE, agrees with the ARI Mean cost estimates. Once we adopt a higher minimum efficiency level, we believe that the retail prices of baseline equipment that must meet that level

[6] ''Hirst, E., ''Expanding U.S. Transmission Capacity.'' Paper prepared for Edison Electric Institute, Washington D.C., July 2000: p. 8–9.

will decline below the price of equipment currently at that level. York International Corporation (York) and ARI confirmed, for example, that their markups generally increase on higher efficiency equipment, and Star Supply Company seemed to imply that distributor markups increase with increasing efficiency. (Star Supply Co., No. 95 at p. 2; York, Transcript No. 73 at p. 117; and ARI, No. 100 at p. 3). Those markups are reflected in the current retail prices of those products. Due to competitive pressures at the baseline level, today's markups would not be sustainable for baseline equipment that meets, but does not exceed, a new standard. In addition, as noted by John Compton of Home Excellence, Inc. (HEI), a heating and air-conditioning contractor, the new, more efficient, baseline equipment would likely possess fewer of the premium features found in today's high efficiency equipment. (HEI, Transcript No. 73 at p. 123). For those reasons, current retail price data would overestimate the relative cost of high efficiency products under new standards. The agreement between ARI's mean cost data and the Wisconsin retail price data suggests that the ARI cost data correspond to today's costs of producing high efficiency equipment rather than to the lower production costs we would expect under new standards.

The reverse engineering analysis, on the other hand, is transparent and the results fall within the ARI range and nearer to the ARI Minimum where we expect competitive pressure to drive manufacturing costs. Seventy-one samples were analyzed using bills-of-materials provided manufacturers, supplemented with three physical teardowns, and detailed estimates for split air conditioners were reviewed with a major manufacturer. Our reverse engineering methodology, though originally conceived as a validation exercise, is itself a valid method of estimating equipment production costs, and is well suited for use in this rulemaking as an indicator of the most likely production costs under new standards.

Based on a consideration of the above, we conclude that the reverse engineering cost estimates are more representative of what actual production costs will be under new standards and that the ARI Mean cost data very likely overestimate those costs. For that reason, we are weighing the reverse engineering cost estimates heavily in our decision-making. We continue to provide the results based on the ARI Mean data cost to illustrate an upper bound, which we believe will be quite an unlikely outcome.

b. *Consideration of Emerging Technologies.* ACEEE and others commented we should have included the savings that could result from the use of emerging technologies rather than presenting them separately. The Oregon Energy Office and Thermalex, Inc. also expressed more optimism regarding the applicability and probability of adoption for microchannel heat exchangers than we had expressed in the TSD. (ACEEE, Transcript No. 73 at p. 88; ASE, No. 81 at pp. 8, 9 and 12; OOE, No. 84 at p. 5; and Thermalex, No. 89 at pp. 1–2).

Trane and York dispute some of the claims regarding the potential of emerging technologies. (Trane, No. 93 at p. 7; and York, No. 90 at p.4).

According to our engineering analysis described in Section 4.5 of the TSD, on a system basis, emerging technologies cannot make a significant cost impact below 14 SEER. That explains why they are not in widespread use today. At 14 SEER and above, some emerging technologies could compete quite favorably with the technologies that currently dominate in some applications. We did not analyze standard levels at 14 SEER, instead we examined 13 SEER and 18 SEER, the Max Tech level. ACEEE contends that, had we evaluated life-cycle-costs using reverse engineering analysis combined with emerging technology impacts, a standard level as high as 14 SEER may have been justified after all, and should have been considered. (ACEEE, Transcript No. 73 at p. 171, and No. 101 at p. 7).

From our ANOPR analysis based on ARI mean costs, we concluded that standard levels between 13 SEER and 18 SEER did not warrant further consideration. York had stated that ARI's cost data already included the benefits of emerging technologies although we could not verify the methods they used to incorporate them. (York, Transcript No. 14 at p. 116; and ARI, Transcript No. 14 at p. 115). Economic impact results based on reverse engineering were more favorable, but still were far from compelling. For example, the impact on national net present value was negative $8.4 billion for 14 SEER split air conditioners. We believe that incorporating the modest reduction in cost due to the most likely impact of emerging technologies (about 10 percent for split air conditioners) would not have resulted in a 14 SEER level being economically justified.

Overall, we considered the potential of emerging technologies to penetrate the market in 13 SEER products under a 13 SEER standard to be higher than under lower standard levels. Partially for that reason, we believe that the burdens that could accrue from increases in the size of baseline equipment under a 13 SEER standard can be somewhat mitigated by the use of emerging technologies.

2. Life Cycle Cost (LCC) Analysis

a. *Probability-based analysis.* Trane questioned the use of a Monte Carlo probability-based analysis because they claim that several of the distributions used to characterize the inputs to the analysis are erroneous. (Trane, No. 93 at pp. 4–5).

As part of the process to improve the energy efficiency standards analysis, the Department uses a probability-based analysis to determine a distribution of life-cycle cost impacts for consumers utilizing central air conditioners and heat pumps. Most of the inputs to the analysis are characterized with distributions. While some of the input distributions are based on limited data, no other data have been offered to recharacterize the distributions. Therefore, the Department sees no compelling reason to alter its assumptions regarding the input distributions.

b. *Energy Use.* Trane claimed that the 1997 Residential Energy Consumption Survey (RECS) sample is too small and may not accurately represent the population of central air conditioner and heat pump consumers. In addition, they claimed that the Department is not accurately representing the saturation of air-conditioned households. Trane stated that the saturation reported by the Department (37.6 percent) is inconsistent with the saturation reported by RECS (47 percent). (Trane, No. 93 at pp. 4–5).

As part of the process to improve the energy efficiency standards analysis, the Department is committed to use sensitivity analysis tools to evaluate the potential distribution of impacts among different subgroups of consumers. The Department believes that RECS provides a nationally representative household data set which is suited for conducting the type of sensitivity analyses suggested by the Process Rule. Limiting the RECS households to those equipped with either central air conditioners or heat pumps, the LCC analysis performs a household-by-household analysis that predicts the percentage of households that will incur net life-cycle cost savings or costs from an increased efficiency standard. With regard to apparent discrepancies between air-conditioned household saturations, the 37.6 percent

saturation value cited by Trane represents only those households with central air conditioners. When including homes with central air-conditioning heat pumps, the household saturation used by the Department in its LCC analysis matches the 47 percent saturation level reported by RECS.

c. *Electricity Prices.* Wholesale electricity cost data for the period of 1998 through October, 2000, presented by experts on behalf of the Appliance Standards Awareness Project (ASAP), demonstrated dramatic variations in seasonal wholesale electricity costs for regions of the country (i.e., California, New England, New York, and the Pennsylvania-New Jersey-Maryland region) that have recently deregulated their electric utility industry. In particular, wholesale costs during summer months and especially certain summer day hours were significantly greater than annual average wholesale costs. Wholesale electricity cost data for the period spanning 1998 through 1999 for six regulated North American Electric Reliability Council (NERC) regions were also presented showing that summer costs were also significantly greater than average annual costs. (Synapse, Transcript, No. 73 at pp.127–137 and No. 108 at p. 5). Asserting that DOE's marginal prices based on 1996 and 1997 data are regulated and do not reflect the marginal cost of electricity under a deregulated market, ASAP, ACEEE, NWPPC, and Synapse argued that based on recent wholesale electricity cost data, marginal costs will significantly exceed average costs during periods when air conditioners are operating.[7] Future marginal electricity prices are also likely to increase as electricity markets through out the U.S. are deregulated. (ASAP, No. 108 at p. 1; ACEEE, Transcript No. 73 at pp. 154–158; NWPPC, No. 76 at pp. 3–4; and Synapse, Transcript No. 73 at pp. 152–153).

Dominion Virginia Power (Dominion), The Southern Company (Southern), and EEI all disagree with the assertion that higher marginal costs will result from higher wholesale electricity costs. Dominion stated that recent deregulation pilot programs in Virginia revealed that residential consumers are not being offered rates that reflect the costs of generation (e.g., time of use rates). Southern warned that it is premature to draw conclusions from wholesale electricity costs this early into the deregulation process. Extremely high wholesale prices now may not be an indicator as what will happen to retail prices in the future. Southern also warned that the specific problems facing California with regard to wholesale electricity costs are not representative of the current situation in the Southeast where peak prices were considerably lower in the summer of 2000 on pooled prices than they were the previous summer because of greater supply availability. EEI argued that flat rate retail pricing will likely continue into the future even under a deregulated market. Electricity suppliers will hedge against any probable summer price spikes by offering high enough flat rates so that financial losses incurred during times of high summer wholesale costs will be more than offset by the profits earned during times when wholesale costs are low (*e.g.,* off peak summer hours or the winter season). (EEI, Transcript No. 73 at pp. 148–150; Dominion, Transcript No. 73 at pp. 158–160; and Southern Company, No. 96 at pp. 6–7).

As was stated in the proposed rule, the method for establishing marginal electricity prices only allows for defining marginal prices for those years in which data are available. In the case of residential pricing, the data for establishing marginal prices (the 1997 RECS [8]) was taken from the years 1996 and 1997. For commercial buildings, utility tariffs used to establish marginal prices were collected in the year 1997. On average, residential marginal prices for households with central air conditioners are 3 percent lower than average rates while for households with heat pumps marginal prices are 7 percent lower. Space-cooling marginal prices in commercial buildings are on average 2 percent greater than average commercial rates. Our method for determining marginal prices provides a snapshot of recent retail rates and may or may not accurately reflect what marginal prices will be like in the future. Although wholesale electricity costs for four deregulated electricity markets demonstrate higher wholesale electricity costs during times when air conditioners are likely to be used, we cannot speculate as to how wholesale electricity prices will be translated into retail prices to residential consumers. Thus, rather than speculating as to how electricity deregulation may impact marginal electricity prices, we are retaining our existing method for establishing marginal prices.

With the above said, the Department investigated the sensitivity of consumer life-cycle costs (aggregated to a national level in the form of a net present value (NPV)) to increases in the marginal electricity price. As will be reported in Chapter V, Analytical Results, the NPV of a 13 SEER standard based on Reverse Engineering manufacturing costs is a savings to the nation of $1 billion. An increase in the marginal electricity price of 3 cents/kWh yields a further increase in the operating cost savings so that the NPV equals $5 billion. Although the Department will continue to rely on its existing method for establishing marginal electricity prices, we recognize that future changes in the electric utility industry due to deregulation could significantly change future electricity prices and, as a result, improve the economic benefits of the standards being issued today.

d. *Product Life.* ARI, Carrier Corp., and The Trane Company all asserted that the 18.4-year average equipment lifetime assumed by the Department is not representative of actual central air conditioner and heat pump life. Both Carrier and Trane believed the lifetime is 15 years while ARI stated that the lifetime is even lower at 13 years. (ARI, No. 100 at p. 4; Carrier, No. 92 at p. 5; and Trane, No. 93 at p. 8).

The basis of the 18.4-year equipment lifetime was a survey conducted on more than 2,100 heat pumps in a seven state region of the U.S.[9]. The survey determined not only the lifetime of a complete heat pump system, but the life of the original compressor as well. Although the system lifetime is on average over 18 years, the survey also showed that the original compressor lifetime was, on average, 14 years. Thus, the survey indicated that essentially all heat pump owners replaced their original compressor once in the lifetime of system. Since the heat pump survey clearly indicates that the original compressor is replaced once in a system's life, DOE's analysis was based on the inclusion of a repair cost for the compressor. Conducting the analysis in this manner retains the average system lifetime of 18.4 years but explicitly addresses the replacement cost of the compressor, which is the most expensive component of a system. As indicated by the survey data, the compressor was assumed to be replaced in the 14th year of the system's life. Although a shorter equipment lifetime is possible, the Department has not been provided with more substantive data to support discontinuing its use of the above mentioned survey data. The Department believes that the survey

[7] Marginal prices exclude fixed charges, average prices include fixed charges.

[8] Residential Energy Consumption Survey.

[9] ''Bucher, M.E., Grastataro, C.M., and Coleman, W.R., ''Heat Pump Life and Compressor Longevity in 'Diverse Climates.'' ASHRAE Transacitons, 1990, 96(1): p. 1567–1571.

data provides an accurate representation of central air conditioner and heat pump life. In addition, an average lifetime of 14 years was run as a scenario for the analyses conducted for the proposed rulemaking showing that the resulting consumer economics were very close to the results generated with the 18.4-year average life coupled with compressor replacement costs.

e. *Installation Cost.* International Comfort Products (ICP) and HEI stated that the consumer's installation costs, *e.g,* labor and materials costs, exclusive of equipment cost, for installing a central air conditioner or heat pump will increase with product efficiency. (ICP, Transcript No. 73 at pp. 126–127; and HEI, Transcript No. 73 at pp. 92–93). ICP specifically voiced concerns over the installation cost differences between baseline (10 SEER) and 14 SEER equipment stating that the more efficient equipment, due its increased physical size, would incur higher labor expenses as a result of needing extra personnel to install the equipment. Other comments claimed that installation costs would be impacted by larger and more efficient units for those installations with size constraints such as equipment closets in manufactured homes and certain replacement installations in single-family homes. (MHI, No. 99 at p. 4; York, No. 90 at p. 5; and Lennox, No. 91 at p. 7).

Throughout the analysis we have assumed that installation costs would remain constant as efficiency increased. We remain unconvinced based on the comments we have received that our assumption is necessarily incorrect. Even if installation costs do generally rise as the size and weight of equipment increases, manufacturers will have the incentive under new standards to reduce the size of 13 SEER equipment using various approaches at their disposal. These include existing design options that we have mentioned, such as adopting variable speed and modulating capacity technologies, converting to microchannel heat exchangers, increasing the size of the unconstrained outdoor unit or indoor unit only, or changing the footprint or elevation of the unit. These possible solutions are applicable to manufactured homes as well as site-built homes.

For those reasons, we are retaining our assumption that installation costs remain constant as efficiency levels rise.

f. *Markups.* ARI, York, Carrier and Trane commented that we had apparently assumed that markups decreased as efficiency levels increased, and provided evidence to the contrary. (ARI, No. 100 at p. 3; York, No. 90 at p. 4; Carrier, No. 92 at p. 5; and Trane, No. 93 at p. 12).

In fact, we did assume for the Manufacturer Impact Analysis that markups increase with increasing efficiency under a given standard level. This agrees with the comments. However, for the consumer economic analyses, as the minimum standard level increases, we assumed that some of the markups on the baseline product do decrease. Comments did not address that issue, and we believe our assumption is correct. Appendix D of the TSD provides more information on this issue.

3. Shipments/National Energy Savings

a. Adjustments to NAECA Shipment Scenario. ACEEE and the NEEP assert that the NAECA efficiency scenario we developed is not at all representative of the effect of the NAECA standard as we claim. (ACEEE; Transcript No. 73 at p. 213 and No. 118 at p. 4). They point out that the distribution of equipment higher than 10 SEER in 1993 was 18 percent, and that our NAECA scenarios apply much smaller fractions of shipments than 18 percent.

As we mentioned in the TSD for the proposed rule (section 8.3.5), the NAECA scenario represents the effect that NAECA had on equipment efficiency in the market. A further explanation is warranted. While sales of equipment rated higher than 10 SEER was indeed 18 percent in 1993, it was 10 percent in 1992, 7 percent in 1991, 5 percent in 1990 and 3 percent in 1989. A trend of improving efficiency had already been in place since the late 1970's. NAECA, which became effective in 1992, clearly did not cause all the high efficiency shipments that existed in 1993. However, NAECA did seem to stimulate more high efficiency shipments than could have been explained by the ongoing trend. It is that enhancement to the status quo that our NAECA scenario attempts to reproduce. Thus, under our NAECA scenario, shipments above the 13 SEER level increase from 1 percent under the base case to 7 percent with a 13 SEER standard. Expecting them to increase from 1 percent to 18 percent as ACEEE and NEEP seem to assert is not at all representative of the NAECA experience and is more in line with the Shift scenario that we developed.

b. *Fuel Switching.* Several comments noted the potential for fuel- or equipment-switching from heat pumps to either gas-fired or electric resistance heating equipment due to the disparity in the standards proposed for central air conditioners (12 SEER) and heat pumps (13 SEER). The comments stated that the incremental purchase price of a 13 SEER heat pump relative to a 12 SEER air conditioner with either a gas-fired or electric resistance heating system is great enough to drive heat pump consumers to an alternative space-conditioning system. (ARI, No. 100 at p. 10; Southern Company, No. 96 at p. 3; AEP, No. 83 at p. 2; Carrier, No. 92 at p. 4; EEI, No. 80 at p. 8; York, No. 90 at p. 7; and Lennox, No. 91 at pp. 4–6).

Acknowledging the potential for fuel- or equipment-switching, both ASE and ACEEE recommended setting both air conditioner and heat pump standards to 13 SEER. (ASE, Transcript No. 73 at p. 197; and ACEEE, Transcript No. 73 at pp. 202–203).

From the perspective of saving the maximum amount of energy that is economically justifiable, the biggest ''fuel'' switching concern is from heat pumps to a combination of central air conditioners and electric resistance heating. This may occur in households that have only electric service and where the incremental purchase price of heat pumps is too great. Such a price increase might occur if the standard on heat pumps is significantly higher than the standard for central air conditioners.

Based on data from the 1997 RECS, a little over 14 percent of households have either baseboard or forced air electric resistance heating with room or central air conditioning compared to almost 10 percent of households which have heat pumps. Because there are already such a large percentage of households that utilize a combination of central or room air-conditioning with resistance heat to meet their space-conditioning needs, this supports the possibility that some purchasers would choose to switch to resistance heat from heat pumps.

Compared to heat pumps meeting the standards issued in the proposed rule (*i.e.,* 13 SEER and 7.7 HSPF), electric resistance heating uses over 225 percent of the energy for the same amount of heating. Therefore, if a standard of 13 SEER and 7.7 HSPF is issued for heat pumps while a 12 SEER standard is set for central air conditioners, a mere 4 percent of heat pump households would need to switch to central air conditioners and electric resistance heating to negate the energy savings achieved from increasing the heat pump standard from 12 SEER/7.4 HSPF to 13 SEER/7.7 HSPF.

If heat pump and air conditioner standards were set at different levels, the price differential between the two would increase on the order of $200. Under those conditions, we consider it likely that at least 4 percent of prospective heat pump owners would

switch to lower-priced resistance heat. Therefore, we have weighed this concern in adopting today's standard levels, which require air conditioners and heat pumps to meet the same minimum efficiency standard so as to reduce the likelihood of switching to resistance heating.

A larger price differential between heat pumps and air conditioners will also tend to encourage switching to gas or oil fired furnaces. It is not our objective to encourage or discourage that type of fuel switching. Therefore, we also considered this potential effect in our decision to establish air conditioner and heat pump efficiency standards at the same SEER level.

c. *Drop in Shipments in New Construction Market.* ACEEE argued that DOE's forecasts for more efficient air-conditioning equipment estimated too large of a drop in shipments to the new construction market. They state that because the new construction market already has an 80 percent saturation rate it is unlikely that this market will forego the installation of more efficient air-conditioning equipment due to its associated increased purchase price. (ACEEE, Transcript No. 73 at pp. 219–221). This is effectively an argument that the price elasticity of air conditioners and heat pumps in the new construction market should be much lower than we have assumed.

Historical saturation data, however, seems to confirm that the price elasticity in the new construction market is closer to what was derived for the Shipments Analysis, which is already much lower than the elasticity we assumed in the replacement market, for example. As the price of air conditioners and heat pumps has dropped over time relative to household income, the saturation of air-conditioning and heat pump equipment has increased in the new housing market to its current value of 80 percent. Because of the high saturation in the new construction market, the purchase price elasticity for the new housing market is small relative to the replacement market. But although the price elasticity is small, a decrease in shipments to the new construction market will still be likely when equipment prices increase (as we expect to occur under a new efficiency standard). As a result, for the case of a 13 SEER standard for split system air conditioners for example, shipments to the new construction market drop by approximately 3 percent based on reverse engineering manufacturing cost data. For comparison purposes, shipments to the early replacement market drop much more significantly (approximately 15 percent) as this market is far less saturated and the resulting purchase price elasticity is much more elastic. For those reasons, we retained our assumed price elasticity in the analysis.

4. Manufacturer Impact Analysis

A few comments addressed the manufacturer impact analysis. Trane disputes our assumed manufacturer markups. ARI commented that a survey of their members revealed that our markup assumptions are grossly underestimated, but the TSD (Table 8.7) reveals that, in fact, their survey data agrees with the markups we used in the GRIM analysis to estimate manufacturer impacts. (Trane, No. 93 at pp. 12 and 22; and ARI, No. 100 at p. 3).

Trane also pointed out several oversights and simplifications relating to our characterization of manufacturers and our apparent failure to present cash flow results and other important indicators of financial strength. (Trane, No. 93 at pp. 6, 11–13 and 23). We believe that Chapter 8 of the TSD addresses most of Trane's concerns. No evidence cited in the comments suggest that our assumptions contain errors that would warrant significant change in our conclusions regarding manufacturing impacts.

5. Utility Impacts

a. *Peak Demand Impacts.* ACEEE asserts that the peak power impacts presented in the proposed rule underestimate the true peak generation impacts due to central air conditioner and heat pump standards. ACEEE's assertion is based on what they consider as more accurate and significantly greater peak impacts as estimated by the Appliance Standards Awareness Project (ASAP).[10] (ACEEE, No. 104 at pp. 5–6). APPA warned that excessively high SEER standards could increase peak demand. (APPA, No. 113 at p. 1).

For purposes of comparing the estimated peak impacts from the Department's analysis based on the use of NEMS–BRS and those from ASAP, it is helpful to consider the concept of a conservation load factor (CLF). The CLF was first introduced by researchers at Lawrence Berkeley National Laboratory to allow for the straightforward calculation of the peak demand avoided from a given amount of energy savings.[11] The CLF is defined as:

$$\mathrm{CLF} = \frac{\text{Annual Site Energy Savings (kWh)}}{\text{Peak Load Savings (kW)} \cdot 8760 \text{ hours}}$$

Thus, a conservation technology that saves a constant amount of power on a continuous basis has a CLF of 1.0. Because air conditioning use occurs most often during times of peak demand, the CLF is significantly lower. The lower the CLF, the greater the amount of peak load savings achieved for a given amount of annual energy savings.

For a 13 SEER central air conditioner and heat pump standard, NEMS–BRS forecasts peak demand savings which result in a nationally representative CLF of 0.22. In contrast, for the same 13 SEER standard, ASAP forecasts energy and peak demand savings which result in CLFs ranging from 0.08 to 0.14. Based on the above discrepancy in the CLF, ACEEE asserts that the peak demand savings forecasted by NEMS–BRS are too low. The Department disagrees with ACEEE's position for two reasons: (1) ASAP's peak savings estimates rely on suspect air conditioner demand data, and (2) metered end-use data from air-conditioned households in California and Florida indicate that the NEMS–BRS-based CLF value of 0.22 is reasonable.

With regard to ASAP's peak demand estimates, regional calculations are based on peak demand data from a single 1988 study by the Narragansett Electric Co. (an electric utility in the Northeast).[12] Although ASAP increased

[10] Staying cool: How Energy-Efficient Air Conditioners Can Prevent Blackouts, Cut Pollution and Save Money, Appliance Standards Awareness Project, July 2000, Authors: J. Thone, T. Kubo, and S. Nadel.

[11] Conservation Screening Curves to Compare Efficiency Investments to Power Plants: Applications to Commercial Sector Conservation Programs, Lawrence Berkeley National Laboratory, Berkeley, CA, August 1990, published in the Proceedings of the 1990 ACEEE Summer Study on Energy Efficiency in Buildings, Authors: J. Koomey, A. Rosenfeld, and A. Gadgil.

[12] Personal communication with Steve Nadel, ACEEE, October, 2000.

the Northeast peak demand data by 25 percent for the two Southern divisions and decreased it by 25 percent for the Pacific division, no basis for these adjustments are provided. Because of ASAP's reliance on peak demand data from only one region of the country, we do not place much confidence in the peak generation savings provided by ASAP.

As opposed to the ASAP results, metered end-use data from Southern California and Florida indicate that climate has a much larger affect on the CLF than reported by ASAP. In Southern California, a metered end-use study conducted on 132 air-conditioned households in Southern California Edison's service area revealed that the CLF for this region is likely 0.08.[13] In Homestead, Florida, a metered end-use study conducted on ten air-conditioned homes indicated that the CLF is likely 0.42.[14] Although strong conclusions cannot be drawn from only two studies, the metered end-use results do provide the Department with some confidence that the NEMS–BRS CLF estimate of 0.22 is reasonable since it falls between the CLF range provided by the two metered end-use studies. Therefore, we have reason to believe that our assumption is more valid than ASAP's.

Obviously more research needs to be conducted in the area of peak demand impacts due to increased air conditioner efficiency. But until such extensive research is conducted, the Department sees no reason to discontinue its use of NEMS-BRS to estimate peak demand savings.

6. Projection of Trends

Several comments suggested or asserted that we should project historical trends that they believe exist. These include price reductions or productivity improvements in manufacturing. (ACEEE, Transcript No. 73 at pp. 64 and 88–90; and NRDC, Transcript No. 73 at pp. 105 and 115), post-standard product efficiencies (ACEEE, Transcript No. 73 at p. 210), and electricity prices. (ASAP, No. 108 at p. 1; ACEEE, Transcript No. 73 at pp. 154–158; NWPPC, No. 76 at pp. 3–4; and Synapse, Transcript No. 73 at pp. 152–153).

Other comments responded to some of these suggestions. With regard to the issue of price reductions or productivity improvements, some contend that reductions are due to declining commodity metals prices rather than any increases in production efficiency. (Lennox, No. 91 at pp. 4–5). On the issue of efficiency trends, EEI claims that rather than post-standard efficiency increases, the Department neglected to account for pre-standard efficiency increases. (EEI, Transcript No. 73 at pp. 206–208). Counter to claims that electricity prices will increase in the future due to the deregulation of the electric utility industry, others state that the future path of deregulation is so uncertain that it is unknown as to whether prices will decline or increase. (EEI, Transcript No. 73 at pp. 148–150; Dominion, Transcript No. 73 at pp. 158–160; and Southern Company, No. 96 at pp. 6–7).

In these instances where we have conflicting opinions about what is responsible for creating a trend, we have no basis for changing our initial assumption. Usually, we rely on the most recent set of data we have available to us to make projections into the future. In the case of efficiency trends, we rely on existing trends that seem to indicate that efficiency will remain static after a new standard becomes effective. In the case of electricity prices, we rely on the projections provided in the Annual Energy Outlook, which is publicly and readily available, and which we assume is unbiased with respect to parties interested in the outcome of this rulemaking. Since this is the case for all the supposed trends listed above, we have not changed any of our projections.

C. Other Comments

1. HCFC Phaseout

Comments noted that as efficiency increases, refrigerant charge may increase also. This could cause the United States to reach its cap on HCFC–22 use earlier, resulting in higher prices for HCFC–22 than we have considered. (Carrier, No. 92 at p. 4). We would point out that occurrence would likely accelerate the transition to HCFC-free refrigerants. There are also other options available for manufacturers to improve equipment efficiency without increasing equipment size or charge. Both of these factors will have the effect of suppressing increases in refrigerant prices over the long term.

2. Ozone Reduction Catalyst Requirement

ARI and its members remind us to consider the potential impact on the industry of Texas' proposed requirement to mandate the application of ozone reduction technology in its most severe non-attainment areas. (ARI, No. 100 at p. 13; and Carrier, No. 92 at p. 4).

We understand that Texas has since withdrawn its proposal. However, the TSD does include a preliminary estimate of the burden of this requirement on the industry and, to the extent that other states may pursue the same course of action, included that in our consideration of cumulative burden. We consider that widespread requirements for this technology will not be likely, due to its apparently high cost, questionable efficacy, and possible reduction in energy efficiency.

D. Additional Standard Requirements

1. EER Standard

In the proposed rule, we discussed including a requirement for a new standard based on a system's energy efficiency ratio (EER) in addition to its seasonal energy efficiency ratio (SEER). That new standard was to be established at the median of available EER ratings at a particular SEER level. Our objective was to ensure that any increase in the SEER standard also resulted in an increase in equipment efficiency under the warmer conditions best measured by EER. That resulting drop in peak power demand would then help avoid the need for new power plants and, in the view of many stakeholders, improve power system reliability. We asked whether an EER standard would impose a significant burden on manufacturers, would significantly affect the cost of equipment considered in our analysis, would negatively impact the sale of modulating equipment, or would significantly improve power system reliability.

Several comments, including those of environmental advocacy groups and some utilities, supported adding an EER standard and urged us to adopt the median EER standards we proposed. They cited potential benefits that would accrue from avoidance of new power plant capacity and a reduction in the occurrence of blackouts. NRDC believes that the Act requires us to adopt an EER-based standard. Underlying these comments is a belief that SEER standards alone cannot guarantee those benefits. Carrier supports an EER-based standard only in lieu of a SEER-based standard because it would harmonize with International Standards Organization testing requirements. (ACEEE, Transcript No. 73 at p. 62; NWPPC, Transcript No. 73 at p. 161; ASE, No. 81 at p. 1; NPPD, No. 109 at p. 1; OOE, No. 84 at p. 2; NRDC, No. 88

[13] Residential Appliance End-Use Survey; Collection of Residential Appliance Time-of-Use Energy Load Profiles; 1991 Results, prepared by Quantum Consulting Inc., Berkeley, CA for Southern California Edison Co., San Dimas, CA, November, 1992.

[14] Monitored Energy Use Patterns in Low-Income Housing (FSEC-PF–300), Florida Solar Energy Center, Cocoa, FL, 1996, Authors: D. S. Parker, M. D. Mazzara, and J. R. Sherwin.

at p. 3; Omaha Public Power District (OPPD), No. 111 at p. 2; and Carrier, No. 92 at p. 8).

Other comments took an opposing position on the grounds that including an EER standard would impede the application of modulating components; that we are not permitted to adopt a standard other than SEER and have not sufficiently analyzed the validity of an EER-based standard; that an EER standard would eliminate products from the market; that an EER standard will not improve electric system reliability, particularly nationwide; and that there are burdens associated with testing and certifying EER. (National Comfort Products (NCP), No. 77 at p. 3; EEI, Transcript No. 73 at p. 327 and No. 80 at pp. 3 and 9; Dominion, Transcript No. 73 at p. 264 and No. 68 at p. 2; Trane, No. 93 at p. 14; York, No. 90 at pp. 1–4; ARI, Transcript No. 73 at p. 320 and No. 100 at p. 16; Goodman, Transcript No. 73 at p. 302; and Southern, Transcript No. 73 at p. 243).

It is true that under the efficiency level approach, we assume that all equipment at the same SEER level costs the same to produce regardless of the combination of design options chosen to achieve that SEER level. These options include those that raise EER, including compressor and heat exchanger upgrades, as well as those that do not raise EER, such as thermostatic expansion valves. For any given SEER and HSPF levels, the efficiency level approach cannot differentiate equipment cost based on different EER choices.

Underlying the efficiency level approach, however, is the assumption that manufacturers make cost-optimal choices based on their own unique situations. Therefore, a manufacturer who was required to raise the EER of its equipment from the 10th percentile to the 50th percentile (median) would indeed incur added costs since its design choices would no longer be cost-optimal for its own circumstances. Since efficiency levels are expressed in terms of SEER and HSPF only, we would have to depart from the efficiency level approach in order to quantify those costs.

We are still convinced that the stringent physical relationship between EER and SEER in equipment rated through 12 SEER, which is comprised exclusively of non-modulating equipment, would remain intact under new standards and for the foreseeable future. Under the adopted 13 SEER standard, we have less certainty since there are counteracting incentives. On the one hand, to reduce warranty claims, manufacturers have a strong incentive to simplify the design of baseline equipment. This suggests they will favor heat exchanger or compressor improvements that improve EER.

On the other hand, manufacturers will have a strong incentive to reduce the size of 13 SEER baseline equipment. Although microchannel heat exchangers could reduce size and improve EER, manufacturers could also choose to introduce variable speed or capacity modulation technologies that can induce them to lower EER at a given SEER level. As the cost of power electronics and control technologies come down, this possibility becomes more likely.

However, even if variable speed or modulating technologies eventually predominate, and thereby reduce EERs in typical equipment, they would still reduce peak demand compared to today's 10 SEER baseline equipment. Furthermore, because variable speed and modulating equipment mitigate the cyclic losses that are due to widespread over sizing, the aggregated peak demand of a group of modulating air conditioners with lower EERs will likely be lower than that of a similar group of non-modulating air conditioners with higher EERs at the same SEER level. Also, utilities have the opportunity with modulating equipment to offer customers the option to allow the utility to ''lock'' the equipment into low-capacity operation in return for a lower electricity price.

Finally, although the Department is interested in reducing peak demand, the primary purpose of appliance efficiency standards is to save energy. An EER standard could be counterproductive by discouraging variable speed and modulation, which can save substantial amounts of energy over the cooling season while providing consumers with additional benefits not found in single speed and non-modulating equipment.

Although the Department believes that EPCA permits adoption of an EER standard, for the foregoing reasons, we do not believe that the Act requires or suggests that we establish such a standard under the circumstances here. Given the adopted standard levels, a national EER standard is both unnecessary and undesirable. Most benefits accruing from an EER standard will likely accrue from the SEER standards alone, without the associated burdens on manufacturers and the disincentives to apply energy-saving modulating technologies. Therefore, we have not adopted an EER standard in this rule.

2. TXV Requirement

In the proposed rule, we discussed the issues associated with mandating thermostatic expansion valves, or TXVs. We did not propose such a requirement, but we recognized that such a requirement may be capable of saving a great deal of energy. We discussed our options for encouraging their use.

Many comments continue to express strong support for a TXV requirement. Many cite a report submitted by Proctor Engineering (Proctor) that describes the results of a field study covering 4,000 units in California. The study concluded that 62 percent of equipment is mischarged by more than 5 percent, and that TXVs, which perform better than fixed orifices in undercharged conditions, could save 11 percent of the energy used by that equipment. (Proctor No. 105; OOE, No. 84 at p. 2; NRDC, No. 88; California Energy Commission (CEC), No. 98 at p. 1; ACEEE, No. 101 at p. 8; PG&E No. 104 at p. 1; and ASAP, Transcript No. 73 at p. 4).

Other comments expressed some resistance to a TXV requirement, particularly regarding our authority to establish one. Some also express concerns about problems associated with TXVs. (NCP, No. 77 at p. 4; Trane, No. 93 at p. 19; York, No. 90 at pp. 4–5; Lennox, No. 91 at p. 3; EEI No. 80 at p. 3; and Carrier, No. 92 at p. 10).

In response to our concern that mandating TXVs would stifle the development of other, perhaps preferable, technologies, Proctor and ACEEE suggested performance tests that could be applied in lieu of a TXV requirement. They would reward equipment that possessed a TXV or performed as well while undercharged or when airflow is restricted. This approach is at least partially endorsed by others. (NRDC No. 88 at p. 17; CEC No. 199 at p. 1; and OOE, No. 84 at p. 8). Some of the commenters preferred that we initially specify TXVs but then phase out that requirement in favor of a performance-based approach.

As we alluded to in the proposed rule, a performance-based approach is also our preference and is certainly in the spirit of EPCA. As such, the SEER test procedure, not a TXV requirement, appears to be the most appropriate vehicle for assuring that an equipment's efficiency rating is based on its performance characteristics. In fact, TXVs already receive credit in the test procedure because of their superior cyclic performance. We are not eager to circumvent the test procedure, particularly when the key data either are not available or have not been thoroughly reviewed by all interested

parties. That said, we favor a SEER test procedure that fairly evaluates equipment performance under conditions that represent those encountered in the field. We would prefer to encourage correct charging or proper airflow, but we recognize that practical barriers exist, and we will take steps to evaluate whether the SEER test procedure can and should be amended to better reflect equipment performance under improper charge or airflow.

In sum, we are not adopting a TXV requirement in this rulemaking. Any alterations in the SEER test procedure to further encourage the use of TXVs will be undertaken in a separate process. In addition to pursuing modifications to the test procedure, we encourage parties interested in encouraging the broader application of TXVs to pursue other avenues. These include voluntary programs like Energy Star, tax incentives, and other state and local initiatives, which can all be tied to the presence of a device like a TXV. States also have the opportunity to apply to us for an exemption from preemption that would allow them to implement their own requirements based on their own unique circumstances.

3. HSPF Levels

Some comments urged us to reconsider our proposed HSPF levels, particularly to reflect differences among the HSPF-SEER relationships across capacity ratings. Trane commented that HSPF-SEER factors for heat pumps are lower with 410A refrigerant than with HCFC–22, and that the current proposal for HSPF is too high for 410A by as much as 3 to 5 percent. (ARI, No. 100 at p. 11; Carrier, No. 92 at p. 7; and Trane, No. 93 at p. 8). Others urged us to adopt HSPF levels at the median for each SEER level we considered. (OOE, No. 84 at p. 11; and ACEEE, No. 104 at p. 12).

As we explained in the proposed rule, we established the HSPF levels corresponding to SEER levels in an attempt to maintain the existing offset between the minimum HSPF and the minimum SEER. Heating energy is a large fraction of total heat pump energy consumption, so we prefer not to relax that relationship without sound evidence regarding the burdens that would be mitigated. We are reluctant to adopt a more stringent level since we are aware that heat pump design is difficult and costly, and that improvements in HSPF typically are associated with a reduction in SEER. Too stringent a standard would impose considerable design and testing burdens on manufacturers, could result in the permanent loss of heat pump market share to electric resistance heat, and could encourage fuel switching.

For those reasons, we are retaining our proposed minimum HSPF levels in the standards adopted today.

V. Analytical Results and Conclusions

A. Trial Standard Levels

We examined five standard levels. Table V.1 presents the trial standards levels analyzed for today's final rule and the corresponding efficiency level for each class of product. Trial standard level 5 is the max tech level for each class of product.

TABLE V.1.—TRIAL STANDARDS LEVELS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS (SEER)

Trial standard level	Split air conditioners	Packaged air conditioners	Split heat pumps	Packaged heat pumps
1	11	11	11	11
2	12	12	12	12
3	12	12	13	13
4	13	13	13	13
5	18	18	18	18

For each trial standard level examined, several different scenarios were analyzed consisting of variations on: (1) Electricity price and housing projections; (2) equipment efficiency distributions; (3) manufacturer cost estimates; and (4) societal discount rate. Electricity price and housing projections were based on three different AEO 2000 forecasts: (1) Reference Case, (2) High Growth Case, and (3) Low Growth Case. We analyzed three efficiency scenarios, each of which assumed a different efficiency distribution after new standards would take effect: (1) NAECA scenario, (2) Roll-up scenario, and (3) Shift scenario. Under the standard levels we are adopting, we believe that the Roll-up scenario most closely represents the most likely impact of the new standards, as explained in Chapter 8 of the TSD. We analyzed two manufacturer cost scenarios: (1) Based on reverse engineering data, and (2) based on ARI-provided mean cost data. For the reasons expressed in Parts III and IV of this document, we believe that the reverse engineering data most closely represents the costs as they will actually be under the new standards. We assumed a societal discount rate of 7 percent for calculating net present value (NPV). However, a 3 percent value was investigated as an alternative scenario in accordance with the Office of Management and Budget's (OMB) Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements.

Our decision on today's final rule was arrived at by placing more emphasis on some scenarios rather than others. Our estimates of electricity price and housing projections relied primarily on the AEO2000 reference case. We considered primarily the NAECA and Roll-up efficiency scenarios with an increasing expectation of the Roll-up scenario occurring for more stringent trial standard levels. Finally, we expect manufacturer costs to lie closer to the reverse engineering estimates (which lie between the ARI minimum and ARI mean values).

The results presented in this chapter include only those that are needed to supplement or replace the results we presented in the proposed rule, which still form a basis for our decision with the exception that we are no longer considering the 14-year life scenarios. We believe that the 18.4-year life with a compressor replacement in the 14th year addresses the concerns of those who believe that actual equipment life is closer to 14 years and achieves substantially the same analytical results. Therefore, all analyses below assume an 18.4-year average equipment lifetime with a compressor replacement in the 14th year.

B. Significance of Energy Savings

To estimate the energy savings through 2030 due to revised standards, we compared the energy consumption of central air conditioners and heat pumps under the base case to energy consumption of central air conditioners and heat pumps under the revised standard.

Table V.2 shows the range of cumulative energy savings based on the AEO 2000 Reference, High Growth, and Low Growth cases for each trial standard level. The parameters shown are the two manufacturing costs and the three equipment shipment efficiency scenarios.

TABLE V.2.—RANGE OF NATIONAL ENERGY SAVINGS WITH AEO PRICE FORECAST

Trial standard level	Range of national energy savings for units sold from 2006 to 2030 (quads)					
	Reverse engineering costs			ARI mean costs		
	NAECA	Roll-up	Shift	NAECA	Roll-up	Shift
1	1.7 to 1.8	1.5 to 1.6	1.9 to 2.0	1.7 to 1.8	1.5 to 1.6	1.9 to 20
2	2.9 to 3.2	2.8 to 3.0	3.4 to 3.6	2.9 to 3.2	2.8 to 3.0	3.4 to 3.6
3	3.4 to 3.7	3.3 to 3.5	3.8 to 4.1	3.4 to 3.6	3.3 to 3.5	3.8 to 4.1
4	4.3 to 4.6	4.1 to 4.4	4.7 to 5.0	4.2 to 4.5	4.1 to 4.4	4.6 to 4.9
5	8.4 to 9.0	8.4 to 9.0	8.4 to 9.0	8.1 to 8.7	8.1 to 8.7	8.1 to 8.7

C. Payback Period

As discussed above, the Act requires the Department to examine payback periods to determine if the three-year rebuttable presumption of economic justification applies. As prescribed by the Act, the rebuttable payback period is ''calculated under the applicable test procedure * * *''.

The annual space-cooling and space-heating energy consumption calculated based on the hours of use in the test procedure are on the order of 50 percent greater than the weighted-average energy consumption data used in the life-cycle-cost (LCC) analysis. The LCC data are based on the 1997 RECS for residential buildings and hourly simulations for commercial buildings. Since the test procedure assumes higher annual operating hours than the RECS data implied, the use of test procedure energy consumption results in rebuttable payback periods which are shorter than median payback periods calculated from the LCC analysis.

In Table V.3, we list the rebuttable payback periods versus SEER efficiency level for the four product classes, using the 1997 RECS energy consumption data. This information shows that both classes of heat pumps are presumed to be economically justified up to a 12 SEER efficiency level, using the reverse engineering cost estimates.

TABLE V.3.—SUMMARY OF REBUTTABLE PAYBACK PERIOD (YEARS)

Product class/efficiency level	Reverse engineering costs	ARI mean costs
Split System Central Air Conditioner:		
11	3.5	4.7
12	4.5	5.8
13	5.2	7.6
18	7.3	11.3
Split System Heat Pump:		
11	1.3	2.5
12	1.8	3.3
13	3.2	4.5
18	5.8	6.8
Single Package Air Conditioner:		
11	3.5	7.3
12	3.3	6.2
13	6.8	9.8
18	8.6	13.3
Single Package Heat Pump:		
11	2.1	3.7
12	1.8	4.0
13	4.3	6.5
18	5.4	7.2

D. Economic Justification

1. Economic Impact on Manufacturers and Consumers

Estimated economic impacts of standards on manufacturers are based on the methodology described in the proposed rule; however, in today's final rule the manufacturer impact analysis has been expanded to include impacts based on reverse engineering cost estimates as well as ARI manufacturing cost data. The economic impacts on manufacturers are presented in terms of industry net present value (INPV) as well as change in INPV. INPV is calculated by summing the stream of annual discounted cash flows beginning from the base year of the analysis (2000) and continuing explicitly for ten years after the implementation of the standard and adding the discounted value of the industry at the end of the ten-year period (see TSD Section 8.4.4 and Appendix G). The discount rate is based on the industry's weighted average cost of capital. This method of calculating INPV provides one measure of the fair value of the industry in today's dollars. The impact of new standards on INPV is then the difference between the INPV in the base case (no new standards) and the INPV is the standards case (with new standards).

Data are presented for the base case and for trial standard levels 1 through 4, in Tables V.4 through V.9. As can be observed, manufacturer impacts are relatively insensitive between the

manufacturing cost estimates, but sensitive to the shipment scenarios. The proposed rule provides additional information on the methodology, assumptions and results.

TABLE V.4.—CHANGES IN INDUSTRY NET PRESENT VALUE—REVERSE ENGINEERING RELATIVE COST, NAECA EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	1,539		
1	1,509	(30)	−2
2	1,380	(159)	−10
3	1,368	(171)	−11
4	1,370	(169)	−11

TABLE V.5.—CHANGES IN INDUSTRY NET PRESENT VALUE—REVERSE ENGINEERING RELATIVE COST, ROLL-UP EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	1,539		
1	1,379	(160)	−10
2	1,226	(313)	−20
3	1,220	(319)	−21
4	1,236	(303)	−20

TABLE V.6.—CHANGES IN INDUSTRY NET PRESENT VALUE—REVERSE ENGINEERING RELATIVE COST, SHIFT EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	1,539		
1	1,658	119	8
2	1,772	233	15
3	1,776	237	15
4	1,824	285	19

TABLE V.7.—CHANGES IN INDUSTRY NET PRESENT VALUE—ARI MEAN MANUFACTURING COST, NAECA EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	1,603		
1	1,566	(37)	−2
2	1,417	(186)	−12
3	1,406	(197)	−12
4	1,420	(183)	−11

TABLE V.8.—CHANGES IN INDUSTRY NET PRESENT VALUE—ARI MEAN MANUFACTURING COST, ROLL-UP EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	1,603		
1	1,422	(181)	−11
2	1,241	(362)	−23
3	1,236	(367)	−23
4	1,268	(335)	−21

TABLE V.9.—CHANGES IN INDUSTRY NET PRESENT VALUE—ARI MEAN MANUFACTURING COST, SHIFT EFFICIENCY MIX

Standard level	Industry net present value ($ million)	Change in INPV from base case	
		$ million	Percent
Base	1,603	.....	.....
1	1,740	137	9
2	1,825	222	14
3	1,854	251	16
4	1,914	311	19

Table V.10 provides the change in INPV relative to the base case (with no change in standards) for trial standard levels 1 through 4. Data are presented for two industry segments (lower cost manufacturers and higher cost manufacturers), and for the three shipment efficiency scenarios.

TABLE V.10.—CHANGE IN INDUSTRY NET PRESENT VALUE (PERCENT) RELATIVE TO BASE—COMPARISON BETWEEN LOWER (L) AND HIGHER (H) COST MANUFACTURERS

Standard level	Reverse engineering relative cost (in percent)						ARI mean manufacturing cost (in percent)					
	NAECA		Roll-up		Shift		NAECA		Roll-up		Shift	
	L	H	L	H	L	H	L	H	L	H	L	H
1	5	−4	3	−15	6	8	5	−5	3	−16	7	9
2	7	−16	5	−28	13	16	7	−17	5	−31	12	14
3	8	−17	6	−29	14	16	9	−19	6	−32	14	16
4	12	−18	10	−29	19	18	15	−19	13	−31	21	19

For the group most negatively impacted, *i.e.,* the higher cost group, Table V.11 presents the Return on Invested Capital (ROIC) in year 2011 associated with the base case, and with each new standard level for the NAECA and Roll-up shipment efficiency scenarios.

TABLE V.11.—RETURN ON INVESTED CAPITAL (ROIC) IN 2011 FOR HIGHER COST MANUFACTURERS

Standard level	Reverse engineering (in percent)		ARI manufacturing costs (in percent)	
	NAECA	Roll-up	NAECA	Roll-up
Base	13.0	13.0	13.3	13.3
1	12.2	10.7	12.3	10.7
2	10.2	8.5	0.2	8.4
3	10.0	8.4	10.0	8.3
4	9.7	8.4	9.6	8.3

Consumers will also be affected by increased efficiency standards in that they will experience higher purchase prices and lower operating costs. These impacts are best captured by changes in life cycle costs which are discussed below.

2. Life-Cycle-Cost (LCC)

We analyzed the net effect by calculating the LCC. Inputs required for calculating LCC include total installed costs (*i.e.,* equipment price plus installation costs), annual energy savings, average and marginal electricity prices, electricity price trends, repair costs, maintenance costs, equipment lifetime, and discount rates.

The output of the LCC model is the mean LCC savings for each product class as well as a probability distribution or likelihood of LCC reduction or increase. The LCC analysis for today's final rule employs a concept described in the proposed rule with regard to the percentage of consumers (both residential and commercial) that are impacted to a substantial degree by an increase in the minimum efficiency standard.

Table V.12 summarizes the LCCs for baseline split systems and single package central air conditioners and heat pumps and also shows a 2 percent threshold which helped us identify those consumers who are impacted to a more substantial degree.

TABLE V.12.—BASELINE LIFE-CYCLE-COSTS

Product Class	Baseline LCC	2% of Baseline LCC
Split Air Conditioners	$5,170	$103
Split Heat Pumps	9,679	194
Single Package Air Conditioners	5,629	113
Single Package Heat Pumps	9,626	193

Tables V.13 and V.14 depict the LCC results for split system and single package central air conditioners and heat pumps. The tables show the average LCC values for the baseline and each trial standard level. Since manufacturer cost data were not available for the 18 SEER efficiency levels, 15 SEER cost data were used for all 18 SEER calculations resulting in 18 SEER LCC results which underestimate their true cost level. The data in Tables V.13 and V.14 also present the difference in LCC at each efficiency level relative to the baseline. The differences represent either an LCC savings or an LCC cost increase. In addition, the tables show the subset of consumers (both residential and commercial) at each efficiency level who are impacted in one of three ways: consumers who achieve net LCC savings in excess of 2 percent of the baseline LCC, consumers whose change in LCC is within ±2 percent of the baseline LCC, and consumers who achieve a net LCC increase exceeding 2 percent of the baseline LCC.

TABLE V.13.—SUMMARY OF LCC RESULTS BASED ON REVERSE ENGINEERING MANUFACTURING COSTS

Product Class/Efficiency Level	Average LCC	Average LCC Savings (Costs)	Percent of consumers with		
			Net Savings (>2 %)	Net Savings or Costs (±2%)	Net Costs (>2 %)
Split System Central Air Conditioner:					
10	$5,170	.....	.....	.....	.....
11	5,095	$75	28	70	2%
12	5,057	113	35	40	25%
13	5,057	113	34	27	39%
18	5,307	(137)	25	7	68%
Split System Heat Pump:					
10	9,679	.....	.....	.....	.....
11	9,470	209	40	60	0%
12	9,314	365	58	42	0%
13	9,307	372	52	42	6%
18	9,720	(41)	28	15	57%
Single Package Air Conditioner:					
10	5,629	.....	.....	.....	.....
11	5,551	78	27	72	1%
12	5,466	163	40	51	9%
13	5,600	29	28	20	52%
18	5,905	(276)	21	6	73%
Single Package Heat Pump:					
10	9,626	.....	.....	.....	.....
11	9,419	207	39	61	0
12	9,205	421	66	34	0
13	9,273	353	50	38	12
18	9,460	166	37	15	48

TABLE V.14.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURING COSTS

Product class/efficiency level	Average LCC	Average LCC savings (costs)	Percent of consumers with		
			Net savings (> 2%)	Net savings or (costs) (± 2%)	Net costs (> 2%)
Split System Central Air Conditioner:					
10	$5,170	.....	.....	.....	.....
11	5,126	$44	23	68	9
12	5,125	45	27	34	39
13	5,199	(29)	25	17	58
18	5,725	(555)	15	4	81
Split System Heat Pump:					
10	9,679	.....	.....	.....	.....
11	9,529	150	30	70	0
12	9,437	242	42	55	3
13	9,464	215	39	39	22
18	9,955	(276)	23	11	66
Single Package Air Conditioner:					
10	5,629	.....	.....	.....	.....
11	5,649	(20)	16	47	37
12	5,600	29	26	30	44
13	5,804	(175)	18	11	71
18	6,370	(741)	12	4	84
Single Package Heat Pump:					
10	9,626	.....	.....	.....	.....
11	9,492	134	28	72	0
12	9,372	254	44	49	7
13	9,514	112	33	31	36

TABLE V.14.—SUMMARY OF LCC RESULTS BASED ON ARI MEAN MANUFACTURING COSTS—Continued

Product class/efficiency level	Average LCC	Average LCC savings (costs)	Percent of consumers with		
			Net savings (> 2%)	Net savings or (costs) (± 2%)	Net costs (> 2%)
18	9,922	(296)	24	10	66

Consumer subgroup impacts have been estimated by determining the LCC impacts of the trial standard levels on those consumers who are below the poverty line (*e.g.,* for a family of four, this constitutes a household income of less than $16,036). To perform this calculation, we used the subset of RECS 97 data for households that are considered low-income.[15] Table V.15 and V.16 summarize the impacts on low-income consumers who utilize central air conditioners and heat pumps.

TABLE V.15.—SUMMARY OF LCC RESULTS ON LOW-INCOME CONSUMERS BASED ON REVERSE ENGINEERING MANUFACTURING COSTS

Product class/efficiency level	Average LCC	Average LCC savings (costs)	Percent of consumers with		
			Net savings (> 2%)	Net Savings or (costs) (± 2%)	Net costs (> 2%)
Split System Central Air Conditioner:					
10	$4,906	.....	.....	.....	.....
11	4,855	$51	21	74	5
12	4,841	65	28	38	34
13	4,863	43	26	24	50
18	5,176	(270)	17	6	77
Split System Heat Pump:					
10	8,965	.....	.....	.....	.....
11	8,836	129	26	74	0
12	8,742	223	44	56	0
13	8,780	185	39	49	12
18	9,389	(424)	15	10	75
Single Package Air Conditioner:					
10	5,327	.....	.....	.....	.....
11	5,272	55	21	77	2
12	5,202	125	34	52	14
13	5,364	(37)	21	18	61
18	5,704	(377)	15	5	80
Single Package Heat Pump:					
10	9,149	.....	.....	.....	.....
11	9,057	118	24	76	0
12	8,973	265	53	47	0
13	9,145	148	36	44	20
18	9,619	(284)	20	14	66

TABLE V.16.—SUMMARY OF LCC RESULTS ON LOW-INCOME CONSUMERS BASED ON ARI MEAN MANUFACTURING COSTS

Product class/efficiency level	Average LCC	Average LCC savings (costs)	Percent of consumers with		
			Net savings (> 2%)	Savings/costs (± 2%)	Net costs (> 2%)
Split System Central Air Conditioner:					
10	$4,906	.....	.....	.....	.....
11	4,887	$19	17	66	17
12	4,903	3	20	29	51
13	5,007	(101)	17	14	69
18	5,598	(692)	10	2	88
Split System Heat Pump:					
10	8,965	.....	.....	.....	.....
11	8,890	75	16	84	0
12	8,862	103	27	64	9
13	8,948	17	25	40	35
18	9,610	(645)	11	8	81
Single Package Air Conditioner:					
10	5,327	.....	.....	.....	.....

[15] Approximately 7 percent of the RECS 97 households with central air conditioners and 9 percent of the households with heat pumps met this criteria.

TABLE V.16.—SUMMARY OF LCC RESULTS ON LOW-INCOME CONSUMERS BASED ON ARI MEAN MANUFACTURING COSTS—Continued

Product class/efficiency level	Average LCC	Average LCC savings (costs)	Percent of consumers with		
			Net savings (> 2%)	Savings/costs (± 2%)	Net costs (> 2%)
11	5,283	44	11	42	47
12	5,313	14	20	27	53
13	5,568	(241)	12	9	79
18	6,158	(831)	10	2	88
Single Package Heat Pump:					
10	9,149	.....	.....	.....	.....
11	9,057	92	21	78	1
12	8,973	176	35	53	12
13	9,145	4	25	27	48
18	9,619	(470)	18	8	74

In comparing the LCC results on the subgroup of consumers who are low-income (Tables V.15 and V.16) versus all central air conditioner and heat pump consumers (Tables V.13 and V.14), it appears that low-income consumers have lower savings at the different trial standard levels than the general population of central air conditioner and heat pump consumers. Table V.17 directly compares the LCC impacts of the final rule on both the low-income subgroup and all consumers.

TABLE V.17.—COMPARISON OF LCC IMPACTS OF THE FINAL RULE ON ALL CONSUMERS VS. LOW-INCOME CONSUMERS

Product class	SEER	Reverse engineering costs				ARI mean costs			
		Average LCC savings (costs)		Percent of consumers with net costs (>2% of baseline LCC)		Average LCC savings (costs)		Percent of consumers with net costs (>2% of baseline LCC)	
		All consumers	Low-income	All consumers	Low-income	All consumers	Low-income	All consumers	Low-income
Split System A/C	13	$113	$43	39	50	($29)	($101)	58	69
Split System HP	13	372	185	6	12	215	17	22	35
Single Package A/C	13	29	(37)	52	61	(175)	(241)	71	79
Single Package HP	13	353	148	12	20	112	4	36	48

3. Net Present Value and Net National Employment

The net present value analysis is a measure of the cumulative benefit or cost to the Nation that would result from more stringent standards. As with the determination of national energy savings, four different scenarios were analyzed for each trial standard level consisting of variations on: (1) Electricity price and housing projections; (2) shipment efficiency distributions; (3) manufacturer cost estimates; and (4) societal discount rate. Electricity price and housing projections were based on three different AEO 2000 forecasts: (1) Reference Case, (2) High Growth Case, and (3) Low Growth Case. Three efficiency scenarios were analyzed which forecast the shipment efficiency distribution after new standards: (1) NAECA scenario, (2) Roll-up scenario, and (3) Shift scenario. For these results the equipment lifetime was assumed to be 18.4 years, coupled with the inclusion of compressor replacement costs and an assumed societal discount rate of 7 percent. The range of NPVs are reported in Table V.18.

TABLE V.18: RANGE OF NET PRESENT VALUE WITH ELECTRICITY PRICE AND HOUSING PROJECTIONS

Trial standard level	Net present value for unites sold from 2006 to 2030 (billion 98$)					
	Reverse engineering costs			ARI mean costs		
	NAECA	Rool-up	Shift	NAECA	Roll-up	Shift
1	1 to 2	2	1 to 2	0	1	0 to −1
2	2	2 to 3	0 to −1	−1	0 to 1	−3 to −4
3	1 to 2	2 to 3	−1 to −2	−1 to −2	0 to −1	−5
4	0 to 1	1 to 2	−3 to −4	−5 to −6	−4	−10
5	−10 to −11	−10 to −11	−10 to −11	−22	−22	−22

In order to show the sensitivity of the NPVs in Table V.18 to the various input assumptions, Tables V.19 through V.22 report the range of NPV results for a range of assumptions and scenarios relative to the base case national equipment and operating costs for all central air-conditioning and heat pump equipment. By the ''base case'' we mean the case of no new efficiency standards. The results in Table V.19 and V.20 are the AEO 2000 Reference Case forecast of

electricity prices and housing. The total costs are presented for the base case and each trial standard level. The discount rate is 7 percent. In addition, the NPV (the difference in total costs between the base case and trial standard level), as well as the NPV as a percentage of the ''Base Case Total Costs,'' are calculated for each trial standard level.

TABLE V.19.—NET PRESENT VALUES RESULTS RELATIVE TO BASE CASE TOTAL EQUIPMENT AND OPERATING COSTS BASED ON REVERSE ENGINEERING MANUFACTURING COSTS

TSL	Base case total costs billion 98$	Efficiency scenario								
		NAECA			Roll-up			Shift		
		Total costs billion 98$	NPV		Total costs billion 98$	NPV		Total costs billion 98$	NPV	
			Billion 98$	As percent of base case total		Billion 98$	As percent of base case total		Billion 98$	As percent of base case total
1	379	378	2	0.4	377	2	0.5	378	1	0.4
2	379	377	2	0.5	377	3	0.7	380	(1)	0.2
3	379	378	1	0.4	377	2	0.6	381	(2)	0.5
4	379	379	0	0.0	378	1	0.3	383	(4)	0.9
5	379	390	(10)	−2.7	390	(10)	−2.7	390	(10)	−2.7

TABLE V.20.—NET PRESENT VALUES RELATIVE TO BASE CASE TOTAL EQUIPMENT AND OPERATING COSTS BASED ON ARI MEAN MANUFACTURING COSTS

TSL	Base case total costs billion 98$	Efficiency scenario								
		NAECA			Roll-up			Shift		
		Total costs billion 98$	NPV		Total costs billion 98$	NPV		Total costs billion 98$	NPV	
			Billion 98$	As percent of base case total		Billion 98$	As percent of base case total		billion 98$	as percent of base case total
1	381	381	0	0.0	381	1	0.2	385	0	−0.1
2	381	382	(1)	−0.3	381	0	0.0	388	(3)	−0.9
3	381	383	(2)	−0.5	382	(1)	−0.2	390	(5)	−1.4
4	381	387	(5)	−1.4	386	(4)	−1.1	395	(10)	−2.5
5	381	403	(22)	−5.8	403	(22)	−5.8	407	(22)	−5.8

Table V.21 shows how a 3 percent discount rate[16] impacts the net present value. Only the Roll-up efficiency scenario and the AEO Reference Case electricity price and housing projection were considered in analyzing the impacts from a 3 percent discount rate.

TABLE V.21: NET PRESENT VALUES RESULTS BASED ON 3-PERCENT DISCOUNT RATE

TSL	Reverse engineering costs				ARI mean costs			
	Base case total costs billion 98$	Trial standard level			Base case total costs billion 98$	Trial standard level		
		Total cost billion 98$	Net present value 98$	As percent of base case total costs		Total cost billion 98$	Net present value billion 98$	As percent of base cast total costs
1	708	701	7	0.9	712	707	4	0.6
2	708	697	11	1.6	712	705	6	0.9
3	708	697	11	1.6	712	706	6	0.8
4	708	697	11	1.5	712	711	0	0.0
5	708	716	(8)	−1.2	712	746	(35)	−4.9

The proposed rule also estimated the national employment impacts due to each of the five trial standard levels. As discussed in the proposed rule, the energy efficiency standards for central air conditioners and heat pumps are expected to reduce electricity bills for residential and commercial consumers and the resulting net savings are expected to be redirected to other forms of economic activity. These shifts in

[16] A societal discount rate of 3 percent value was investigated as a scenario in accordance with the Office of Management and Budget's (OMB) Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements.

spending and economic activity are expected to affect the demand for labor.

As we did for the proposed rule, the Department estimated the impacts of the new standards on national labor demand using an input/output model of the U.S. economy. The model characterizes the interconnections among 35 economic sectors using data from the Bureau of Labor Statistics. For some years after the new standards go into effect, new consumer expenditure on air conditioners and heat pumps each year outpaces their annual energy savings. This activity redirects expenditures into the manufacturing sector, which is less labor intensive than other sectors of the economy,[17] producing a loss of jobs in those sectors that is larger than the gain of jobs in manufacturing. Also, a loss of jobs results in the utility sector due to its loss of revenues. As annual consumer energy savings begin to exceed annual new expenditures on air conditioners, eventually the new standards will produce a net gain in national employment.

The increases or decreases in the net demand for labor in the economy estimated by the input/output model due to air conditioner and heat pumps standards are likely to be very small relative to total national employment. For the following reasons any modest changes in employment are in doubt:

- Unemployment is now at the lowest rate in 30 years. If unemployment remains very low during the period when the standards are put into effect, it is unlikely that the standards alone could result in any change in national employment levels;
- Neither the BLS data nor the input-output model used by DOE include the quality or wage level of the jobs. The losses or gains from any potential employment change may be offset if job quality and pay also change; and
- The net benefits or losses from potential employment changes are a result of the estimated net present value of benefits or losses likely to result from air conditioner and heat pump standards. It may not be appropriate to separately identify and consider any employment impacts beyond the calculation of net present value.

Taking into consideration these legitimate concerns regarding the interpretation and use of the employment impacts analysis, the Department concludes only that the proposed central air conditioner and heat pump standards are likely to result in no appreciable job losses to the nation.

4. Impact on Utility or Performance of Products

As detailed in Section V of the proposed rule, in establishing classes of products we believe the adopted standards will not result in any degradation of utility or performance in the covered products.

5. Impact of Any Lessening of Competition

The Act directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. EPCA Section 325(o)(2)(B)(i)(V) and (B)(ii), 42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii).

In order to assist the Attorney General in making such a determination, the Department provided the Department of Justice (DOJ) with copies of the proposed rule and the TSD for review. At DOE's request, the DOJ reviewed the manufacturer impact analysis interview questionnaire to ensure that it would provide insight concerning any lessening of competition due to any proposed trial standard levels.

As previously discussed in section II.D.4 above, the Department of Justice concluded that the residential central air conditioner and heat pump standards contained in the proposed rule could have an adverse impact on competition. The proposed standards would have changed the current central air conditioner and heat pump efficiency standards of 10 SEER/6.8 HSPF for split system air conditioners and heat pumps and 9.7 SEER/6.6 HSPF for single package air conditioners and heat pumps to 12 SEER for air conditioners and 13 SEER/7.7 HSPF for heat pumps. Through-the-wall equipment was the only exception. We proposed an 11 SEER standard for that class.

DOJ identified three possible competitive problems presented by the proposed standards. First, DOJ stated that the proposed 13 SEER heat pump standard would have a disproportionate impact on smaller manufacturers. They stated that currently less than 20 percent of the total current product lines meet the proposed standards, but for some small manufacturers, 100 percent of their product lines fail to satisfy the proposed standard.

Second, DOJ stated that the proposed standard for heat pumps, and in some instances for air conditioners, would have an adverse impact on some manufacturers of products (including those products referred to in the proposed rule as ''niche products'') used to retrofit existing housing and used in manufactured housing. These manufacturers could not, according to DOJ, make units that comply with the rule and fit into the available space.

Third, DOJ expressed concern that the proposed heat pump standard of 13 SEER could make heat pumps less competitive with alternative heating and cooling systems. Because the standard would result in increases in the size and cost of heat pumps, it is possible that purchasers would shift away from heat pumps to other systems that inc1ude electric resistance heat, reducing the competition that presently exists between heat pumps and those other systems.[18]

The Department of Justice urged the Department of Energy to take into account these possible impacts on competition in determining its final energy efficiency standard for air conditioners and heat pumps. DOJ wrote that the Department of Energy should consider setting a lower SEER standard for heat pumps, such as the standard included in Trial Standard Level 2, and a lower SEER standard for air conditioners for retrofit markets where there are space constraints (such as markets served by niche products) and for manufactured housing.

As we noted in the Supplementary ANOPR and proposed rule, nearly all small manufacturers produce only niche products. DOJ's first concern relates to disproportionate impacts on small manufacturers, which are substantially the same group as the niche product manufacturers. Furthermore, niche products almost exclusively serve applications with severe space constraints. Today's final rule prescribes standards only for those products that are not severely space-constrained, and therefore substantially eliminates their first concern regarding the impact of more stringent standards on small manufacturers.

[17] Bureau of Economic Analysis, Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)

[18] DOJ also wrote about our request for comments on a proposal to adopt a standard for steady-state cooling efficiency (EER). The regulation language in the proposed rule did not include a provision regarding an EER standard, and DOJ limited its views to the standards set forth in the proposed regulation language, indicating that if the Department proposes rule language in the future incorporating an EER standard, DOJ would address the competitive impact of that standard.

DOJ's second concern about products intended for space constrained markets are more difficult to address since the standards apply to products at the point of manufacture and not the point of installation. We have removed one element of this concern by not specifying new standards for niche products, primarily due to our concern over their continued viability in replacement applications. However, we recognize that larger conventional equipment also poses problems in replacement applications and that these problems may be more complex in manufactured homes. Nevertheless, air conditioner and heat pump manufacturers do have options for increasing the efficiency of equipment without increasing the size of both the indoor and outdoor units, and we expect products utilizing those options to be available to consumers during the time when the standards we are adopting today are in effect.

As to DOJ's third concern regarding possible shifting in the market from heat pumps to resistance heaters, we have adopted the same minimum SEER requirement for heat pumps as we have for air conditioners. That action substantially reduces the incentive for consumers to switch, thereby addressing that concern.

In summary, the standards we are adopting should effectively eliminate most of DOJ's concerns regarding the lessening of competition, even under TSL 4. To the extent that we have not fully eliminated all their concerns, however, we have considered the remaining possibility for lessening of competition as we weighed the burdens of today's adopted standards.

6. Need of the Nation To Save Energy

The Secretary recognizes the need of the Nation to save energy. Enhanced energy efficiency improves the nation's energy security, and reduces the environmental impacts of energy production. Improved efficiency of central air conditioners and heat pumps is also likely to improve the reliability of the nation's electric system. The energy savings from central air conditioner and heat pump standards result in reduced emissions of carbon and NO_X. Cumulative emissions savings over the 15-year period modeled are shown in Table V.22. The results presented in Table V.22 are based only on the AEO 2000 Reference Case for electricity price and housing projections and the NAECA efficiency scenario.

TABLE V.22.—CUMULATIVE EMISSIONS REDUCTIONS BASED ON AEO 2000 REFERENCE CASE AND NAECA EFFICIENCY SCENARIO (2006–2020)

Trial standard level	Reverse engineering costs		ARI mean costs	
	Carbon (Mt)	NO_X (kt)	Carbon (Mt)	NO_X (kt)
1	13.2	36.7	13.4	37.2
2	23.8	72.7	23.7	67.9
3	27.7	84.4	27.4	78.8
4	32.6	85.8	33.6	102.5
5	63.0	184.2	63.7	193.7

The impact of varying electricity price and housing projections (i.e., different AEO cases) as well as different efficiency scenarios were considered for the Trial Standard Level 4. Table V.23 shows how carbon and NO_X emissions are impacted by the different projections and scenarios.

TABLE V.23.—CUMULATIVE EMISSIONS REDUCTIONS FOR FINAL STANDARD (2006–2020) AND THE IMPACT OF DIFFERENT ELECTRICITY PRICE/HOUSING PROJECTIONS AND EFFICIENCY SCENARIOS

Electricity price and housing projection	Efficiency scenario	Reverse engineering costs		ARI mean costs	
		Carbon (Mt)	NO_X (kt)	Carbon (Mt)	NO_X (kt)
AEO reference case	NAECA	32.6	85.8	33.6	102.5
AEO reference case	Roll-up	32.7	93.8	31.3	87.5
AEO reference case	Shift	36.0	107.1	34.9	97.9
AEO low growth case	NAECA	28.5	97.2	27.5	95.8
AEO high growth case	NAECA	42.2	92.4	42.8	103.1

The annual carbon emission reductions range up to 6.8 Mt in 2020 and the NO_X emissions reductions up to 27.0 kt in 2015.[19] [20] Total carbon and NO_X emissions for each trial standard level are reported in the Environmental Assessment, in the TSD.

The Department makes no effort to monetize the benefits of the actual emission reductions, but there may be time related differences in the perceived value of the emissions depending on when they occur, as with monetized benefits that accumulate over time. Emission reductions that occur sooner are often more desirable than equivalent reductions that occur later. Like monetary benefits, the health, recreational and ecosystem benefits that result from emission reductions are often perceived to have a greater value if they occur sooner, rather than later. To the extent that the different trial standard levels have slightly different shipment distributions over time, some trial standard levels might have a slightly higher proportion of earlier emission reductions than another trial standard level. To show the possible effect of the different timing patterns of the emissions, the Department is also presenting discounted emissions. These calculations were done using the same seven percent discount rate as was used for discounting monetized benefits. We show discounted cumulative emission savings from 2006 through 2030 in Table V.24.

[19] Million metric tons (Mt).

[20] Thousand metric tons (kt).

TABLE V.24.—CUMULATIVE DISCOUNTED EMISSIONS REDUCTIONS BASED ON AEO 2000 REFERENCE CASE AND NAECA EFFICIENCY SCENARIO (2006–2020)

Trial standard level	Reverse engineering costs		ARI mean costs	
	Carbon (Mt)	NO_X (kt)	Carbon (Mt)	NO_X (kt)
1	4.7	15.7	4.8	15.7
2	8.5	30.3	8.5	29.2
3	9.8	35.2	9.8	33.8
4	11.6	36.7	12.0	43.3
5	22.3	77.1	22.7	81.1

7. Other Factors

This provision allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. EPCA Section 325(o)(2)(B)(i)(VI), 42 U.S.C. 6295(o)(2)(B)(i)(VI). The Secretary has decided to consider the impact on peak power requirements and electric utility system reliability.

Peak power impacts on electric utilities from increases in the central air conditioner and heat pump standard are calculated using the NEMS–BRS model. NEMS–BRS is used to estimate peak power impacts by calculating the reduction in planned generation capacity due to an increase in the minimum efficiency standard. Table V.25 shows the estimated reductions in installed generation capacity, in giga-watts (GW), in the year 2020, due to each of the trial standard levels. Of the installed generating capacity avoided, 13 percent would have been provided by coal power plants. The remaining percentage (87 percent) would have been supplied by either gas-fired, oil-fired, or dual-fired power plants. The results presented in Table V.25 are based only on the AEO 2000 Reference Case for electricity price and housing projections and the NAECA efficiency scenario.

TABLE V.25.—INSTALLED GENERATION CAPACITY REDUCTIONS IN THE YEAR 2020 BASED ON AEO 2000 REFERENCE CASE AND NAECA EFFICIENCY SCENARIO

Trial standard level	Reverse engineering costs	ARI mean costs
	Installed generating capacity reduction (GW)	Installed generating capacity reduction (GW)
1	6.5	6.4
2	10.6	10.6
3	12.4	12.3
4	15.5	15.4
5	28.8	28.6

The impact of varying electricity price and housing projections (i.e., different AEO cases) as well as different efficiency scenarios were considered only for the final standard (trial standard level 4). Table V.26 shows how installed generation capacity is impacted by the different projections and scenarios.

TABLE V.26.—INSTALLED GENERATION CAPACITY REDUCTIONS IN THE YEAR 2020 FOR FINAL STANDARD AND THE IMPACT OF DIFFERENT ELECTRICITY PRICE/HOUSING PROJECTIONS AND EFFICIENCY SCENARIOS

Electricity price and housing projection	Efficiency scenario	Reverse engineering costs	ARI mean costs
		Installed generating capacity reduction (GW)	Installed generating capacity reduction (GW)
AEO reference case	NAECA	15.5	15.4
AEO reference case	Roll-up	15.5	15.0
AEO reference case	Shift	16.6	16.4
AEO low growth case	NAECA	14.5	13.9
AEO high growth case	NAECA	16.0	15.6

E. Conclusion

Section 325(o)(2)(A) of the Act, 42 U.S.C. 6295(o)(2)(A), specifies that any new or amended energy conservation standard for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible

and economically justified. In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens. EPCA Section 325(o)(2)(B)(i), 42 U.S.C. 6295(o)(2)(B)(i). The amended standard must ''result in significant conservation of energy.'' EPCA Section 325(o)(3)(B), 42 U.S.C. 6295(o)(3)(B).

We consider the impacts of standards beginning with the max tech level, i.e., Trial Standard Level 5. We then consider less efficient levels until we reach the level which is technologically feasible and economically justified.

To aid the reader as we discuss the benefits or burdens of the trial levels, we have included a summary of the analysis results in Table V.27.[21] Table V.27 presents a summary of quantitative analysis results for each Trial Standard Level based on the assumptions we consider most plausible. These include manufacturing cost estimates from the reverse engineering, an 18.4-year equipment lifetime with one compressor replacement at 14 years, and electricity prices based on the AEO2000 Reference Case.

TABLE V.27.—SUMMARY OF QUANTITATIVE RESULTS [1]

	Trial std 1	Trial std 2	Trial std 3	Trial std 4	Trial std 5
Primary energy saved (quads)[2]	1.5	2.9	3.4	4.2	8.6
Generation capacity offset (GW)[3]	6.5	10.6	12.4	15.5	28.8
NPV ($billion):.					
7% Discount rate, roll-up	2	3	2	1	(10)
7% Discount rate, NAECA	2	2	1	0	(10)
3% Discount rate, roll-up	7	11	11	11	(8)
Cumulative emissions reductions through 2020:					
Carbon equivalent (Mt)[3]	13.2	23.8	27.7	32.7	63.0
NO_X (kt)[3]	36.7	72.7	84.4	93.8	184.2
Cumulative change in INPV ($ million)[4]:					
Roll-up	(160)	(313)	(319)	(303)	.....
NAECA	(30)	(159)	(171)	(169)	.....
Life cycle cost savings ($)[5]:					
Split AC	75	113	113	113	(137)
Packaged AC	78	163	163	29	(276)
Split HP	209	365	372	372	(41)
Packaged HP	207	421	353	353	166
Payback (years)[6]:					
Split AC	7.8	9.8	9.8	11.3	19.6
Packaged AC	7.7	7.5	7.5	14.5	25.1
Split HP	2.7	3.9	6.4	6.4	14.0
Packaged heat pump	4.6	4.0	8.4	8.4	12.8

[1] Parentheses indicate negative (−) values.
[2] Energy savings based on Roll-up efficiency scenario.
[3] Values based on NAECA efficiency scenario with the exception of TSL 4 which is based on the Roll-up scenario.
[4] Not calculated at Trial Standard Level 5.
[5] Negative values indicate LCC increases.
[6] Payback periods are median values.

In addition to the quantitative results, we also consider other burdens and benefits that affect economic justification. The potential to improve the reliability of the electricity system is the major benefit we have not quantified explicitly. In areas where the occurrence of blackouts (and brownouts) can be reduced through expansion of system capacity, the economic value of avoided blackouts associated with reductions in peak load cannot exceed the value of the avoided capacity expansion. That value is already captured in our analysis as savings in consumer utility bills. However, in areas that do not expect to be able to maintain adequate capacity reserves, the value of avoided blackouts associated with reductions in peak demand can far exceed the normal costs of capacity expansion.[22]

We also recognize that the adopted standards could result in additional burdens. These include a possible increase in health problems caused by consumers forgoing air conditioner purchases, a possible reduction in the ability of the product to dehumidify, a possible lessening of competition, and possible difficulty in installing the new baseline products into replacement applications. However, we generally believe that these burdens are capable of being mitigated at any standard level, except possibly Trial Standard Level 5. Section IV discusses our response to comments regarding benefits and burdens and explains our viewpoints on those issues.

First we considered Trial Standard Level 5, the maximum technologically achievable efficiency level for each of four classes, representing uniform 18 SEER requirements. The manufacturing cost we assume for Trial Standard Level 5 is equal to 15 SEER equipment, although we would expect that assumption to understate the cost and price of the product. Trial Standard Level 5 will likely save 8.6 quads of energy which the Department considers significant. These savings will result in the avoidance of approximately 29 GW of installed generation capacity. For comparison, the generating capacity is equivalent to roughly 75 large, 400 megawatt, power plants,[23] approximately 3.7 percent of current installed generating capacity nationwide

[21] All cumulative effects that are not monetary are not discounted. Monetary effects are discounted to 1998 dollars.

[22] For instance, if capacity-related blackouts cost a region $1 billion, society would be willing to pay up to $1 billion to prevent them. If those blackouts can be prevented through either a capacity expansion or a reduction in peak demand, and the new capacity would cost $100 million, the value of the reduction in peak demand can be no more than $100 million, If the region is short on capacity and cannot add new capacity quickly, however, the same reduction in peak demand then can equal the value of the avoided blackout ($1 billion) since there is no feasible alternative.

[23] DOE estimates 9 coal-fired power plants and 66 gas-fired power plants can be avoided. *See* TSD, Chapter 11 and Appendix H.

and more than 13 percent of the anticipated growth in capacity needed by 2020. The emissions reductions are 63.0 Mt of carbon equivalent and 184.2 kt of NO_X.

At Trial Standard Level 5, the average consumer would experience an increase in LCC. Purchasers of split central air-conditioners, the predominant class of central air conditioner with 65 percent of the sales of central air conditioners and heat pumps, would lose on average $137 over the life of the appliance. Purchasers of split heat pumps, the predominant class of heat pump, would lose on average $41. Again, these results do not include the additional price the consumer would pay over the price of a 15 SEER product, which would increase the life cycle cost considerably. Furthermore, for the nation as a whole, Trial Standard Level 5 would result in a net cost of $10 billion in NPV. We did not calculate manufacturer impacts at this trial standard level, determining based on preliminary evaluation that they would be severe and unacceptable.

The Secretary concludes that at Trial Standard Level 5, the benefits of energy savings, generating capacity reductions and emission reductions would be outweighed by the burdens of negative economic impacts to the nation, to the vast majority of consumers and to the manufacturers. Consequently, the Secretary has concluded that Trial Standard Level 5, the Max Tech Level, is not economically justified.

Next, we considered Trial Standard Level 4. This level specifies 13 SEER equipment for all product classes. In considering Trial Standard Level 4 the Roll-up efficiency scenario and reverse engineering cost data are the assumptions we consider to be the most probable as discussed in Part V.A, Trial Standard Levels. Primary energy savings would likely be 4.2 quads which the Department considers significant. The estimated reduction in installed generating capacity is approximately 15 GW, and reduced emissions would range up to 32.7 Mt of carbon equivalent and up to 93.8 kt of NO_X.

The average air conditioner owner would save $113 over the life of a split air conditioner and $29 over the life of a packaged air conditioner. These equate to median payback periods of 11.3 years and 14.5 years, respectively. Low income consumers of split air conditioners and split heat pumps also incur LCC savings ($43 for split air conditioner owners and $185 savings for split heat pump owners). In addition, the average heat pump owner would benefit, saving $372 over the life of a split heat pump and $353 over the life of a packaged heat pump. These equate to median payback periods between 6.4 and 8.4 years, respectively. Trial Standard Level 4 will lower peak electricity demand compared to the base case. That will allow utility service areas to either avoid new capacity or, to the extent that peak loads contribute to reliability problems, improve system reliability. The increase in national net present value is expected to be $1 billion. The decrease in the net present value of the air conditioning and heat pump manufacturing industry is expected to be $300 million.

After carefully considering the analysis, comments, and benefits versus burdens, the Department is amending the energy conservation standards for central air conditioners and central air conditioning heat pumps at Trial Standard Level 4. The Department concludes this standard saves a significant amount of energy and is technologically feasible and economically justified. In determining economic justification, the Department finds that the benefits of energy savings, the projected amount of avoided power plant capacity or improvement in system reliability that accompanies expected reduction in peak demand, consumer life cycle cost savings, national net present value increase and emission reductions resulting from the standards outweigh the burdens. The burdens include the loss of manufacturer net present value, increases in consumer life cycle cost for some users of products covered by today's final rule, any possible increase in health problems caused by consumers forgoing air conditioner purchases, any possible reduction in the ability of the product to dehumidify, any possible lessening of competition, and any possible difficulty in installing the new baseline products into replacement applications.

In the proposed rule, we proposed to adopt Trial Standard Level 3. The Department's decision to instead adopt the more stringent standards represented by Trial Standard Level 4 was influenced by comments we received during the intervening comment period. First, comments we received regarding the prices and markups applied to today's equipment persuaded us that the reverse engineering cost data are much more likely than the ARI Mean cost data to represent the actual costs of producing equipment under more stringent standards. Placing more weight on the costs represented by the reverse engineering data substantially improved the economic benefits to air conditioner owners, demonstrating that the benefits of Trial Standard Level 4 outweigh the burdens. Second, many comments expressed concern that adopting heat pump standards that were more stringent than air conditioner standards would encourage more consumers to purchase electric resistance furnaces and air conditioners instead of heat pumps. In response to those comments, we verified that the energy savings from the more efficient heat pumps would be eliminated if only a small fraction of heat pump owners (4 percent) switched to resistance heating. That possibility provided added justification for adopting the same minimum standards for heat pumps as for air conditioners.

Given our decision to adopt a 13 SEER standard for both central air conditioners and central air conditioning heat pumps, we believe further evaluation is needed before we can issue final standards for air conditioners or heat pumps that currently are intended to serve applications with severe space constraints, exemplified by what we have referred to as ''niche'' products. Based on our preliminary assessment of ''highest viable efficiency levels'' we identified for these products in the TSD (Table 4.23), the comments stating that these products would have difficulty in meeting the standards proposed in the proposed rule, and the concerns expressed by the Department of Justice, we have serious concerns about whether 13 SEER is an appropriate standard for most such products. On the other hand, we are uncertain whether it would be prudent for us to apply the standards contained in the proposed rule to niche products in light of the 13 SEER standard we are adopting today for other products. Doing so may create a strong tendency for niche products, with lower minimum efficiency standards than conventional products, to be applied in conventional applications.

Therefore, today's final rule provides efficiency standards for all residential central air conditioners and heat pumps, except the niche products. We are referring to these products more generally as ''space-constrained products'', since they are specifically intended for severely space-constrained applications. We define them as having the following characteristics:

(1) Rated cooling capacities no greater than 30,000 BTU/hr

(2) An outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that:

(a) are (is) substantially smaller than those of other units that are (i) currently usually installed in site-built single family homes, and (ii) of a similar cooling, and, if a heat pump, heating, capacity, and

(b) if increased, would certainly result in a considerable increase in the cost of installation or would certainly result in a significant loss in the utility of the product to the consumer.

(3) Of a product type that was available for purchase in the United States as of December 1, 2000.

Based on the information we have gathered thus far in this rulemaking, we believe space-constrained products would include equipment described as:

- through-the-wall packaged and split
- ductless split
- single package and non-weatherized

Small duct, high velocity equipment is covered by today's standards. As discussed in the proposed rule (65 FR at 59609–10), DOE addressed the concerns for that equipment by modifying the test procedure to allow those products to be tested as coil-only equipment. Also, the standards in today's rule will clearly apply to the types of central air conditioners and heat pumps normally installed in site-built single family homes.

The Department will re-open the comment period in this rulemaking to address standards for space-constrained products, and plans to publish a final rule in the **Federal Register** no later than eighteen (18) months from the date of publication of today's rule. The rule covering space-constrained products will establish new product classes, to the extent necessary, and minimum efficiency standards for these products. It will also contain an assessment of technical feasibility and economic justification in accordance with the requirements of the Act. The Department intends to make the rule for space-constrained products effective on January 23, 2006.

Before reopening the comment period, we will initially identify those product types we believe should be treated as space-constrained products, and will begin to assess the impact of a rulemaking for these products on small businesses. To aid in this process, we will seek shortly the following information from each manufacturer of those products that we believe may meet the definition of space-constrained products:

(1) the number of employees employed by the company as of December 31, 2000 (to assist us in determining whether we should consider the company to be a small business entity);

(2) a list of proposed space-constrained products, providing for each type of product:

(a) a description of its intended applications

(b) a description based on physical characteristics, manufacturing characteristics, capacity, and performance attributes that would distinguish it from other types of products, and which would be enforceable at the point of manufacture

(c) a list of models produced of that product type by the manufacturer, containing for each model: Physical dimensions, rated capacities, and range of efficiency ratings available;

(3) a statement of whether the number of units produced by the manufacturer was less than or greater than 100,000 units in the year 2000; and

(4) an estimate of the percentage of units produced by the manufacturer that the manufacturer estimates are installed as replacements for similar units.

The Department encourages companies that believe they manufacture space-constrained products to immediately submit this information, without awaiting a request from DOE, to Ms. Geraldine Paige at the address indicated at the beginning of this notice.

We will make the information we obtain publicly available (excluding confidential information) through a **Federal Register** notice. A comment period will follow during which time the public will have an opportunity to review the published information and respond to the Department. Following the close of the comment period, we will issue in the **Federal Register** our determination of which of the published products we believe are space-constrained products and which we believe are not. We expect these steps to proceed simultaneously with the other activities to set standards for such products.

VI. Procedural Issues and Regulatory Review

A. Review Under the National Environmental Policy Act

The Department prepared an Environmental Assessment (EA) (DOE/EA–1352) available from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0854. We found the environmental effects associated with various standard efficiency levels for central air conditioners and heat pumps to be not significant, and therefore we are publishing, elsewhere in this issue of the **Federal Register**, a Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council of Environmental Quality (40 CFR Parts 1500–1508), and the Department's regulations for compliance with NEPA (10 CFR Part 1021).

B. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's regulatory action has been determined to be an ''economically significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget.

The draft submitted to OIRA and other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, telephone (202) 586–3142.

The proposed rule contained a summary of the Regulatory Analysis which focused on the major alternatives considered in arriving at the approach to improving the energy efficiency of consumer products. The reader is referred to the complete draft ''Regulatory Impact Analysis,'' which is contained in the TSD, available as indicated at the beginning of this notice. It consists of: (1) A statement of the problem addressed by this regulation, and the mandate for government action; (2) a description and analysis of the feasible policy alternatives to this regulation; (3) a quantitative comparison of the impacts of the alternatives; and (4) the national economic impacts of the proposed standard.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires an assessment of the impact of regulations on small businesses. To be categorized as a ''small'' air conditioning and warm air heating equipment manufacturer, a firm must employ no more than 750 employees.

The Department prepared a manufacturing impact analysis which was made public and available to all residential central air conditioner and heat pump manufacturers. Other impacts on small businesses were previously discussed in the proposed rule. 65 FR 59590, 59629–30 (October 5, 2000). The Department reaffirms its certification in the proposed rule.

Today's rule will not have a significant impact on a substantial number of small entities, and preparation of a regulatory flexibility analysis is unnecessary.

Most small businesses engaged in the manufacture of central air conditioners and heat pumps produce products that we have called ''niche'' products. To address the concerns of the Department of Justice and many commenters regarding the impacts of more stringent standards on small manufacturers, we are continuing our evaluation of standards for those products and have not issued new standards for them as part of this rule.

D. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act. 44 U.S.C. 3501 et seq.

E. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's final rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the relevant standards.

F. ''Takings'' Assessment Review

DOE has determined pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. Agencies also must have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. DOE published its intergovernmental consultation policy on March 14, 2000. 65 FR 13735. DOE has examined today's final rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. State regulations that may have existed on the products that are the subject of today's final rule were preempted by the Federal standards established in NAECA. States can petition the Department for exemption from such preemption to the extent, and based on criteria, set forth in EPCA.

H. Review Under the Unfunded Mandates Reform Act

With respect to a proposed regulatory action that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation), section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires a Federal agency to publish estimates of the resulting costs, benefits and other effects on the national economy. 2 U.S.C. 1532(a), (b). UMRA also requires each Federal agency to develop an effective process to permit timely input by state, local, and tribal governments on a proposed significant intergovernmental mandate. The Department's consultation process is described in a notice published in the **Federal Register** on March 18, 1997 (62 FR 12820). Today's final rule may impose expenditures of $100 million or more on the private sector. It does not contain a Federal intergovernmental mandate.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The Supplementary Information section of the Notice of Final Rulemaking and ''Regulatory Impact Analysis'' section of the TSD for this Final Rule responds to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by section 325(o) of the Energy Policy and Conservation Act (42 U.S.C. 6295(o)), today's final rule establishes energy conservation standards for central air conditioners and heat pumps that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for today's final rule.

I. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under the Plain Language Directives

Section 1(b)(12) of Executive Order 12866 requires that each agency draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty. Similarly, the Presidential memorandum of June 1, 1998 (63 FR 31883) directs the heads of executive departments and agencies to use plain language in all proposed and final rulemaking documents published in the **Federal Register.**

Today's rule uses the following general techniques to abide by Section 1(b)(12) of Executive Order 12866 and the Presidential memorandum of June 1, 1998:

- Organization of the material to serve the needs of the readers (stakeholders);
- Use of common, everyday words in short sentences; and
- Shorter sentences and sections.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. DOE also will submit the supporting analyses to the Comptroller General (GAO) and make them available to each House of Congress. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, on January 16, 2001.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, Code of Federal Regulations is amended, as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by adding a definition for ''space-constrained products'' in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

Space constrained product means a central air conditioner or heat pump:

(1) That has rated cooling capacities no greater than 30,000 BTU/hr;

(2) That has an outdoor or indoor unit having at least two overall exterior dimensions or an overall displacement that:

(i) Are (is) substantially smaller than those of other units that are (i) currently usually installed in site-built single family homes, and (ii) of a similar cooling, and, if a heat pump, heating, capacity, and

(ii) If increased, would certainly result in a considerable increase in the usual cost of installation or would certainly result in a significant loss in the utility of the product to the consumer; and

(3) Of a product type that was available for purchase in the United States as of December 1, 2000.

* * * * *

3. Section 430.32 of Subpart C is amended by revising paragraph (c) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(c) *Central air conditioners and central air conditioning heat pumps.* (1) Split system central air conditioners and central air conditioning heat pumps manufactured after January 1, 1992, and before January 23, 2006, and single package central air conditioners and central air conditioning heat pumps manufactured after January 1, 1993, and before January 23, 2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

Product class	Seasonal energy efficiency ratio	Heating seasonal performance factor
(i) Split systems	10.0	6.8
(ii) Single package systems	9.7	6.6

(2) Central air conditioners and central air conditioning heat pumps manufactured on or after January 23, 2006, shall have Seasonal Energy Efficiency Ratio and Heating Seasonal Performance Factor no less than:

Product class	Seasonal energy efficiency ratio (SEER)	Heating seasonal performance factor (HSPF)
(i) Split system air conditioners	13	
(ii) Split system heat pumps	13	7.7
(iii) Single package air conditioners	13	
(iv) Single package heat pumps	13	7.7
(v) Space constrained products	[reserved]	[reserved]

* * * * *

Appendix

[The following letter from the Department of Justice will not appear in the Code of Federal Regulations.]

DEPARTMENT OF JUSTICE,

Antitrust Division, Main Justice Building, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, (202) 514–2401/(202) 616–2645 (f), antitrust@justice.usdoj.gov (internet), http://www.usdoj.gov (World Wide Web).

December 4, 2000.

Mary Anne Sullivan, General Counsel, Department of Energy, Washington, DC 20585.

Dear General Counsel Sullivan:

I am responding to your October 16, 2000 letter seeking the views of the Attorney General about the potential impact on competition of two proposed energy efficiency standards: one for clothes washers and the other for residential central air conditioners and heat pumps. Your request was submitted pursuant to Section 325(o)(2)(B)(i) of the Energy Policy and Conservation Act, 42 U.S.C. § 6291, 6295 (''EPCA''), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy efficiency standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR § 0.40(g).

We have reviewed the proposed standards and the supplementary information published in the Federal Register notices and submitted to the Attorney General, which include information provided to the Department of Energy by manufacturers. We have additionally conducted interviews with members of the industries.

We have concluded that the proposed clothes washer standard would not adversely affect competition. In reaching this conclusion, we note that the proposed standard is based on a joint recommendation submitted to the Department of Energy by manufacturers and energy conservation advocates. That recommendation states that virtually all manufacturers of clothes washers who sell in the United States participated in arriving at the recommendation through their trade association, that the recommendation

was developed in consultation with small manufacturers, and that the manufacturers believe the new standard would not likely reduce competition. We note further that, as the industry recommended, the proposed standard will be phased in over six years, which will allow companies that do not already have products that meet the proposed standard sufficient time to redesign their product lines.

With respect to the proposed residential central air conditioner and heat pump standard, we have concluded that there could be an adverse impact on competition. The proposed standard, Trial Standard Level 3, is expressed in terms of two industry measurements: SEER (Seasonal Energy Efficiency Ratio) and HSPF (Heating Seasonal Performance Factor).[1] These standards would change from the current central air conditioner and heat pump efficiency standards of 10 SEER/6.8 HSPF for split system air conditioners and heat pumps and 9.7 SEER/6.6 HPSF for single package air conditioners and heat pumps to 12 SEER for air conditioners and 13 SEER/7.7 HPSF for heat pumps.

We have identified three possible competitive problems presented by the proposed standards. First, the proposed 13 SEER heat pump standard would have a disproportionate impact on smaller manufacturers. Currently less than 20% of the total current product lines meet the proposed standards, but for some small manufacturers, 100% of their product lines fail to satisfy the proposed standard.

Second, the proposed standard for heat pumps, and in some instances for air conditioners, would have an adverse impact on some manufacturers of these products (including those products referred to in the Federal Register notice as ''niche products'') used to retrofit existing housing and used in manufactured housing. These manufacturers could not make units that comply with the rule and fit into the available space.

Third, the proposed heat pump standard of 13 SEER could make heat pumps less competitive with alternative heating and cooling systems. Because the standard will result in increases in the size and cost of heat pumps, it is possible that purchasers will shift away from heat pumps to other systems that include electric resistance heat, reducing the competition that presently exists between heat pumps and those other systems.

The Department of Justice urges the Department of Energy to take into account these possible impacts on competition in determining its final energy efficiency standard for air conditioners and heat pumps. The Department of Energy should consider setting a lower SEER standard for heat pumps, such as the standard included in Trial Standard Level 2, and a lower SEER standard for air conditioners for retrofit markets where there are space constraints (such as markets served by niche products) and for manufactured housing.

Sincerely,

A. Douglas Melamed,

Acting Assistant Attorney General.

[FR Doc. 01–1790 Filed 1–18–01; 11:30 am]

BILLING CODE 6450–01–P

[1] The **Federal Register** notice also requested comments on a proposal to adopt a standard for steady-state cooling efficiency (EER) and discussed several options the Department of Energy is considering. The proposed rule set forth in the notice does not, however, include a provision regarding an EER standard, and the views of the Department of Justice expressed in this letter are limited to the impact of any lessening of competition * * * that is likely to result from the imposition of the [proposed] standard,'' as required by EPCA. If the Department of Energy proposes a rule in the future incorporating an EER standard, the Department will then evaluate that proposed rule and express its views about the competitive impact of that standard.

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Finding of No Significant Impact Energy Conservation Program for Consumer Products

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact (FONSI) for Energy Conservation Standard for Residential Central Air Conditioners and Heat Pumps.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act and the National Appliance Energy Conservation Act, and the National Appliance Energy Conservation Amendments, prescribes energy conservation standards for certain major household appliances, and requires the Department of Energy (DOE) to administer an energy conservation program for these products. Based on an Environmental Assessment (EA), DOE/EA–1352, DOE has determined that the adoption of energy efficiency Trial Standard Level (TSL) 4 for residential central air conditioners and heat pumps, as adopted by the Final Rule entitled the ''Energy Conservation Program for Consumer Products: Residential Central Air Conditioners and Heat Pumps Energy Conservation Standards,'' would not be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA). Therefore, an environmental impact statement (EIS) is not required, and the Department is issuing this finding of no significant impact (FONSI).

ADDRESSES: Public Availability: Copies of the EA are available from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, S.W., Washington, D.C., 20585–0121, (202) 586–9127.

FOR FURTHER PROGRAM INFORMATION CONTACT: Dr. Michael E. McCabe, Office of Energy Efficiency and Renewable Energy (EE–41), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121, (202) 586–9127.

For Further Information Regarding the DOE NEPA Process, Contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119, (202) 586–4600.

SUPPLEMENTARY INFORMATION:

Description of the Proposed Action: The proposed action is the establishment of a revised energy conservation standard (TSL 4) for residential central air conditioners and heat pumps.

Environmental Impacts: The EA evaluates the environmental impacts of a range of new energy conservation standards for residential central air conditioners and heat pumps. The results are presented for each potential trial standard level. Each potential trial standard level is an alternative action, and the environmental impacts of each alternative are compared to what would be expected to happen if no new standard were adopted, i.e., the ''no action'' alternative.

The main environmental impact is decreased emissions from fossil-fueled electricity generation. All of the minimum efficiency levels considered for this appliance product category would result in decreased electricity use and, therefore, a reduction in power plant emissions. The proposed efficiency standard would generally decrease air pollution by decreasing future energy demand. The environmental analysis considers two pollutants, nitrogen oxides (NO_X) and sulfur dioxide (SO_2), and one emission, carbon. The Department, in the Notice of Proposed Rulemaking, proposed TSL 3. However, in the Final Rule, DOE is adopting TSL 4, an alternative that was also analyzed in the EA. The results of the analysis show an estimated cumulative reduction of 27.7 to 32.7 million tons of carbon equivalent emissions, and 84.4 to 93.8 thousand tons NO_X for TSLs 3 and 4, respectively, through the year 2020. This would be a national reduction of 0.19% and 0.23% of carbon equivalent emissions, and 0.08% and 0.09% of NO_X. Because emissions of SO_2 from power plants are capped by clean air legislation, physical emissions of this pollutant from electricity generation will be only minimally affected by residential central air conditioners and heat pumps standards. The maximum SO_2 allowed by law will most likely still be produced, but because SO_2 emissions are traded, and if SO_2 emissions are lowered due to less power generation, then the cost of SO_2 emission credits may decrease slightly. Therefore, the EA did not consider changes in power sector SO_2 emissions because they will be negligible.

Determination: Based upon the EA, DOE has determined that the adoption of the proposed energy-efficiency standard for residential central air conditioners and heat pumps would not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Therefore, an EIS is not required, and the Department is issuing this FONSI.

Issued in Washington, D.C., the 4th day, of January 2001.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 01–1791 Filed 1–18–01; 11:30 am]

BILLING CODE 6450–01–P

Federal Register

Monday,
January 22, 2001

Part XIII

The President

Proclamation 7391—Religious Freedom Day, 2001

Federal Register
Vol. 66, No. 14
Monday, January 22, 2001

Presidential Documents

Title 3—

The President

Proclamation 7391 of January 15, 2001

Religious Freedom Day, 2001

By the President of the United States of America

A Proclamation

Each year we commemorate the anniversary of the religious freedom statute adopted by the Virginia legislature in 1786. This statute, which reflects the wisdom and foresight of its author, Thomas Jefferson, and its cosponsor, James Madison, became the model for the First Amendment to our Constitution, and it has had enormous and far-reaching consequences for the life of our Nation.

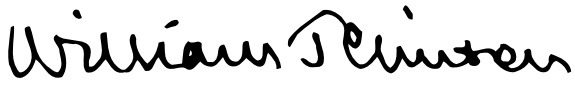
Just a few weeks ago, we saw how much that freedom means to all of us, as we celebrated Christmas, Hanukkah, and the Eid Al-Fitr within the same week. These holidays belonging to the Christian, Jewish, and Muslim faiths were observed freely and in peace by millions of people across our country—an occurrence unimaginable in some regions of the world, where people suffer persecution and even death for worshipping according to their conscience. Because of religious freedom, Americans have been spared much of the violence, bitterness, and conflict that have scarred so many other societies, and our Nation has benefited immeasurably from the many contributions of generations of men and women who emigrated to America because their right to worship was protected by the Constitution and the courts and respected by their fellow citizens.

But religious freedom is not a right we enjoy solely by virtue of being Americans; it is a fundamental human right that should be honored in every Nation around the globe. That is why I have sought to make it an integral part of U.S. foreign policy and to raise international awareness that many countries continue to engage in or tolerate egregious violations of their citizens' right to worship. I am proud that we have expanded reporting on religious freedom in every country, and that through our Ambassador at Large for International Religious Freedom, we have strived to promote religious freedom where it is threatened or denied and to intervene on behalf of those who are suffering because of their religious beliefs and practices.

More than 2 centuries ago, our founders sought to protect the religious freedom that inherently belongs to every human being. Now the responsibility falls to our generation, not only to preserve that right, but also to work together for the day when all people can worship freely and in peace.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 16, 2001, as Religious Freedom Day. I call upon the people of the United States to observe this day with appropriate ceremonies, activities, and programs, and I urge all Americans to reaffirm their devotion to the fundamental principles of religious freedom and tolerance.

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



[FR Doc. 01–1908
Filed 1–18–01; 9:12 am]
Billing code 3195–01–P

Federal Register

Monday,

January 22, 2001

Part XIV

Environmental Protection Agency

40 CFR Part 745

Lead; Notification Requirements for Lead-based Paint Abatement Activities and Training; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62165; FRL–6764–7]

RIN 2070–AD31

Lead; Notification Requirements for Lead-based Paint Abatement Activities and Training

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the authority of Section 407 of the Toxic Substances Control Act (TSCA), as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as ''Title X (ten),'' EPA proposes to establish notification procedures for certified lead abatement professionals conducting lead-based paint activities, and accredited training programs providing lead-based paint activities courses. Specifically, this proposal seeks to establish the procedures that would be used to provide the notification to the Agency that is currently required prior to the commencement of lead-based paint abatement activities. This proposal also seeks to establish provisions which would require accredited training programs to notify the Agency under the following conditions: (1) Prior to providing lead-based paint activities training courses, and (2) following completion of lead-based paint activities training courses. These notification requirements are necessary to provide EPA compliance monitoring and enforcement personnel with information necessary to track compliance activities and to prioritize inspections. Today's proposal, will help to prevent lead poisoning in children under the age of six by supporting the Agency's implementation of the mandate in Title X to ensure that lead abatement professionals involved in inspecting, assessing or removing lead-based paint, dust or soil are trained and certified to conduct these activities.

DATES: Comments, identified by docket control number OPPTS–62165, must be received by EPA on or before February 21, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. under **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–62165 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Mike Wilson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–4664; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are a lead abatement professional (individual or firm) who must be certified to conduct lead-based paint abatement activities in accordance with 40 CFR 745.226. Specifically, the proposed procedure for notification of the commencement of lead-based paint abatement activities applies to both the certified supervisor and certified firm employing that supervisor conducting lead-based paint abatement activities. The proposed procedure for notification of lead-based paint activities training courses applies to the training manager of an accredited training program.

This proposed rule applies only in States and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States and Indian tribes contact the National Lead Information Center (NLIC) at 1–800–424–LEAD. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Code	Examples of Potentially Affected Entities
Lead abatement professionals	562910	Firms and supervisors engaged in lead-based paint activities.
Training programs	611519	Training programs providing training services in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR part 745. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the Internet Home Page for the EPA Lead Program at http://www.epa.gov/lead/. You can also access an electronic copy of this document by going directly to the **Federal Register**listings at http://www.epa.gov/fedrgstr/, and look up this document using the date of publication. To access information about lead-based paint and the Lead Program, go directly to EPA's Lead Home Page at http://www.epa.gov/lead.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–62165. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any

electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Non-confidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–62165 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified above. Do 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. Comments will also be accepted on standard disks in WordPerfect 6.1/8 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–62165. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we may not have 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 copies of any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the proposed rule or collection activity.
- Make sure to submit your comments by the deadline in this notice.
- To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. How Does this Action Fit into EPA's Overall Lead Program?

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. Several sections of Title X directed EPA to promulgate regulations aimed at fulfilling the purposes of Title X. These included TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and the establishment of standards for conducting lead-based paint activities. Section 404 of TSCA requires that EPA establish procedures for States seeking to establish their own programs for lead-based paint activities. On August 29, 1996, EPA promulgated a final rule under sections 402 and 404 of TSCA titled ''Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities'' (61 FR 45778). This rule is codified at 40 CFR part 745, subparts L and Q.

One of the standards EPA developed for performing lead-based paint activities, codified at 40 CFR 745.227(e)(4), requires notification to EPA prior to the commencement of lead-based paint abatement activities in a residential dwelling, or child-occupied facility, or as a result of a Federal, State, Tribal, or local order. However, the current 40 CFR 745.227(e)(4) does not detail specific notification procedures. Today's proposal includes such procedures.

Today's proposal also includes requirements for accredited training programs (accredited under 40 CFR 745.225) to notify the Agency of lead-based paint activities course schedules prior to being taught and provide information after the completion of a training course. Currently, accredited training programs are asked to voluntarily notify the Agency prior to offering a lead-based paint activities course. This proposal seeks to codify this practice.

These proposed notification requirements for lead-based paint abatement activities and training courses will assist significantly in the implementation of lead-based paint activities regulations codified at 40 CFR part 745 subpart L. The notification provisions will help to assure compliance by facilitating observation of abatement activities and training by EPA compliance monitoring and enforcement personnel.

B. What is the Agency's Authority for Taking this Action?

EPA is issuing this proposed rule under the authority of section 407 of the Toxic Substance Control Act (TSCA), 15 U.S.C. 2687. Section 407 states that regulations of the Administrator under Subchapter IV of TSCA shall include such recordkeeping and reporting requirements as may be necessary to insure effective implementation. EPA regulations under Subchapter IV of TSCA include lead-based paint activities regulations, which this proposal seeks to amend, codified at 40 CFR part 745 subpart L.

III. Proposal

A. What are the Requirements for Notification of Lead-based Paint Abatement Activities?

Today's proposed rule includes the procedures that will be used to satisfy the requirements for the notification of commencement of lead-based paint abatement activities in § 745.227(e). This provision includes instructions which would require firms certified under 40 CFR 745.226 to provide notification to the Agency prior to conducting lead-based paint abatement activities. The original notice, signed by a certified supervisor, would be required to be received by the Agency at least 10 business days prior to the start of lead-based paint abatement activities. An abbreviated notification period is provided for lead-based paint abatement activities conducted in response to an elevated blood lead (EBL) determination and/or a Federal, State, Tribal, or local emergency abatement order, where the firm is unable to comply with the standard notification period due to the necessity for an expeditious response to such event. If lead-based paint abatement activities are expected to begin on a date other than that specified in the original notice or if the other reported information changes, an updated notice would be required. This proposal would prohibit lead-based paint abatement activities from starting on any date other than the one contained in the applicable notification. This notification provision would provide EPA compliance monitoring and enforcement personnel with information necessary to track compliance activity and to prioritize compliance inspections. The notice would include the following:

1. Notification type (Original, Updated, Cancellation).
2. Date when lead-based paint abatement activities will commence.
3. Date when lead-based paint abatement activities will end (approximation using best professional judgement).
4. Firm's name, EPA certification number, address, and phone number.
5. Type of building on/in which abatement work will be performed.
6. Property name (if applicable).
7. Property address for abatement work, including nearest cross streets.
8. Copy of Federal/State/Tribal/Local emergency abatement order, if applicable.
9. Name, EPA certification number, and signature of the Certified Supervisor.
10. Approximate square footage/acreage to be abated.
11. Brief description of abatement activities to be performed.

Notification would be accomplished using any of the following methods: written notice, or E-mail. All notices submitted by E-mail must be followed with written notice within 24 hours of submission. Written notification would be accomplished using either the sample form titled ''Notification of Lead-Based Paint Abatement Activities'' or a similar form. All written notices would be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. When using the U.S. Postal Service for delivery, an additional three business days should be factored in to ensure Agency receipt of the notice by the required date. The notice would have to be signed by a certified supervisor. Notification instructions and sample forms would be obtained from the National Lead Information Center (NLIC) at 1–800–424–LEAD, or the Internet at http://www.epa.gov/lead.

B. What are the Requirements for Notification of Lead-based Paint Activities Training?

Today's proposed rule includes requirements for the notification of lead-based paint activities training in 40 CFR 745.225(c). This provision would require training programs certified under 40 CFR 745.225 to provide notification to the Agency prior to conducting lead-based paint activities courses. The original notice would be required to be received by the Agency at least 10 business days prior to the start of a lead-based paint activities course. An updated notice would be required if the starting date for a lead-based paint activities course is changed to a date other than that specified in the original notice or if the other reported information changes. This proposed rule would also prohibit lead-based paint activities courses from starting on any date other than the date which is contained in the applicable notification. This notification provision would provide EPA compliance monitoring and enforcement personnel with information necessary to track training program compliance and to prioritize compliance inspections. The notice would include the following:

1. Notification type (Original, Updated, Cancellation).
2. Training program name, EPA accreditation number, address, and phone number.
3. Course discipline, type (initial/refresher), and the language in which instruction will be given.
4. Date(s) and time(s) of training.
5. Training location(s) phone number, and street address (including nearest cross streets).
6. Principal instructors name.
7. Training manager's name and signature.

Training programs would also be required to provide notice to the Agency following completion of a lead-based paint activities course. This notice would be provided to the Agency within 10 business days of course completion. This notification provision would provide information necessary for the following: (1) the evaluation of certification applications, and (2) to properly evaluate the training and certification credentials of individuals conducting lead-based paint abatement activities. This notice would include the following:

1. Training program name, EPA accreditation number, address, and phone number.
2. Course discipline and type (initial/refresher).
3. Date(s) of training.
4. The following student information:
a. Name.
b. Address.
c. Social security number.
d. Course completion certificate number.
e. Student test scores.
5. Training manager's name and signature.

Notification of lead-based paint activities course schedules and notice following completion of lead-based paint activities courses would be accomplished using any of the following methods: written notice, or by E-mail. All notices submitted by E-mail would be followed up with a written notice. Written notification of lead-based paint activities course schedules would be accomplished using either the sample form titled ''Lead-based Paint Activities Training Course Schedule'' or similar form. Written notification following lead-based paint activities courses would be accomplished using either the sample form titled ''Lead-based Paint Activities Training Course Follow-up'' or similar form. All written notices would be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. When using the U.S. Postal Service for delivery, an additional 3 business days should be factored in to ensure Agency receipt of the notice by the required date. The notice would have to be signed by the Training Manager. Notification instructions and sample forms would be obtained from the National Lead Information Center (NLIC) at 1–8001–4241–LEAD, or on the Internet at http://www.epa.gov/lead/.

C. What Were the Principal Issues Considered During the Development of this Proposal?

1. *How is notification accomplished?* While considering notification methods, the Agency reviewed the notification provisions of several existing State lead-based paint abatement programs, as well as a similar Agency program for asbestos abatement, the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. It was determined that each of these programs require notification in writing, delivered by hand, postal service, or commercial delivery service.

The NESHAP program received comments regarding the use of faxed notification. In the 1990 final rule (55 FR 48406), the NESHAP program responded that EPA did not consider fax notification to be sufficiently reliable, at the time, to allow their use but might consider the use of facsimile machines in the future when their reliability improved.

For purposes of this proposal, the Agency would like to make use of existing technology to simplify the lead-based paint abatement and training notification process. The use of fax machines today is commonplace and reliability concerns are greatly diminished. Also, E-mail is a reliable and effective communication tool. Therefore, in addition to the more traditional notification methods (mail, commercial delivery service, or hand delivery) the Agency is proposing to allow fax and E-mail notification. In allowing E-mail notifications, the Agency is proposing that E-mail notification would require follow-up written notification for the record. However, the original E-mail notice would satisfy the applicable notification time requirements.

The Agency is also particularly interested in receiving comments on other electronic reporting mechanisms, including web-based on-line reporting. Under the Government Paperwork Elimination Act (GPEA) of 1998, Public Law No. 105–277, all Federal agencies are required to have an electronic means of reporting to government as an alternative to reporting on paper by October 2003, and such submissions and transactions must be given the same legal effect as a paper submission. It requires Federal agencies to provide individuals or entities the option to submit information, transact business with the Agency, and maintain records electronically, when practicable. In addition, the Electronic Signatures in Global and National Commerce Act (E-SIGN) of 2000, Public Law No. 106–229, is intended to eliminate legal barriers to the use of electronic technology in business-to-business and consumer transactions. It's basic purpose is to promote the use of electronic signatures, electronic contract formation, and electronic record-keeping in private commerce by establishing legal equivalence between: (1) Contracts written on paper and contracts in electronic form; (2) pen-and-ink signatures and electronic signatures; and (3) other legally-required written documents and the same information in electronic form.

In compliance with these mandates, EPA is developing a centralized Agency-wide electronic report receiving system, called the ''Central Data Exchange'' (CDX). Once CDX is in place for a particular reporting or submission requirement, regulated entities that wish to submit electronic documents directly to EPA would be able to do so using CDX. In addition, until CDX is available, and parallel to CDX, the Office of Pollution Prevention and Toxics (OPPT) is also developing a user-friendly electronic reporting process for the information that is submitted to EPA under sections 4, 5, 8, and 12(b) of TSCA. OPPT expects to implement these electronic reporting options in the first quarter of 2001. In providing comments on additional electronic options to consider for the notification covered in this proposed rule, EPA asks commenters to also provide estimates for the reporting burden associated with electronic reporting, differences between the burden of reporting electronically versus in paper, availability of technology necessary for electronic reporting, and comments or preferences between on-line web-based notifications and e-mail electronic options.

The Agency also considered telephone notification and found it inappropriate because it would increase administrative burden, and would be less reliable due to inherent problems associated with transcribing verbal information. Therefore, the Agency does not intend to allow telephone notification.

2. *Time periods for notification.* In determining when EPA would require receipt of abatement and training notifications, the Agency considered input from the following:

(1) A similar regulatory program NESHAP.

(2) Existing state notification requirements.

(3) EPA's Office of Enforcement and Compliance Assistance (OECA).

The Agency operates a similar regulatory program, the NESHAP, which requires Agency notification for asbestos stripping and removal. The NESHAP program requires original notification to be postmarked 10 business days prior to the commencement of asbestos stripping and removal projects. NESHAP notification is required in writing, to be delivered by hand, U.S. Postal Service, or commercial delivery service. The 10 business day period is necessary to review the notice, assign appropriate personnel, arrange for travel, and dispatch Agency representatives. Travel is often required due to the large geographical areas for which the 10 EPA regional offices are responsible.

The Agency also reviewed several existing State programs including California, Texas, Oklahoma, and New Jersey. These States require 5 days, 7 days, 10 days, and 14 business days respectively for original notification of lead-based paint abatement activities. Each of these State programs require notification in writing. Although it is difficult to directly compare specific notification provisions due primarily to differences in staffing and jurisdictional areas at the State level, it is important to note that the EPA proposed 10 business day notification period is readily comparable to the notification periods of these States.

OECA manages the enforcement and compliance assurance activities for the NESHAP program. While the two programs are similar in nature, the lead-based paint activities program has a more complex regulatory structure with more disciplines and requirements than NESHAP. Therefore, OECA recommends that notification be received by the Agency at least 10 business days prior to the start of lead-based paint abatement activities and training courses, to assure that adequate time is allotted for compliance monitoring staff and managers to thoroughly review, select, and prepare for potential inspections of work sites and training programs. OECA staff emphasize the many activities which must be conducted in preparation for a site inspection including: (1) Notification processing; (2) inspection determination; (3) travel authorization; (4) pre-inspection notification; (5) preliminary compliance review; and (6) travel.

In conclusion, the Agency believes that receipt of notification 10 business days prior to conducting lead-based paint abatement activities or training courses is necessary to facilitate the inspection of abatement and training locations. The proposal also would also include provisions for updating the original notification. The Agency determined that a 10 business day

notification would also apply to a change in course location, or if the course is to be presented earlier than described in the original notification. Other changes, including cancellation of a session, need only be received by the Agency at least 2 business days before the session is scheduled to begin. Such notification periods are appropriate to allow proper allocation of EPA compliance monitoring and enforcement resources, and to prevent the arrival of Agency personnel at the wrong location or time.

3. *Abbreviated notification time period*. The Agency understands that situations arise which require prompt action and that in these situations a firm may find it difficult, if not impossible, to satisfy the standard 10 business day notification period for lead-based paint abatement activities. In defining when these instances might occur, the Agency identified those abatement activities which are required in response to a determination that a child has an elevated blood lead level (EBL) or as a result of a Federal, State, Tribal, or local emergency abatement order as those which would require such prompt action. Notification time periods in such instances would be abbreviated and require documentation showing evidence of an EBL determination or a copy of the order to be included as part of the written notification.

IV. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this proposed rule is not a ''significant regulatory action'' subject to review by OMB under E.O. 12866, because this action does not meet any of the criteria for a ''significant regulatory action'' under section 3(f) of E.O. 12866.

The estimated costs for the first year of implementation are estimated to be approximately $440,000, decreasing to an average annual estimated cost of approximately $395,000 in subsequent years. For additional information about these estimated costs, please refer to the document entitled ''Information Collection Request (ICR) Supporting Statement for a Proposed Addendum to EPA ICR No. 1715 entitled TSCA section 402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities'' (herein the ICR Addendum (EPA ICR No. 1715.03)). This document, identified as EPA ICR No. 1715.03, is an addendum to the existing ICR. A copy is available in the public version of the official record described in Unit I.B.2., and may also be obtained as described in Unit IV.C.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency hereby certifies that this action, if promulgated as proposed, will not have a significant economic impact on a substantial number of small entities. The factual basis for the Agency's determination is as follows. The Agency already assessed the potential small entity impacts of the notification requirement that was contained in the 1998 final rule as part of the economic analysis that was prepared for that rulemaking, a copy of which is available in the public version of the official record for this proposed rule as described in Unit I.B.2. In addition, the Agency has estimated the impacts of the other requirements contained in this proposed rule, which are presented in the ICR Addendum (EPA ICR No. 1715.03).

In considering the potential small entity impacts of this proposed rule, the Agency believes that its previous determination regarding the Lead Abatement Training and Certification Final Rule is not affected by the notification procedures contained in this proposed rule. Based on the estimated total costs of this proposed rule as presented in the ICR Addendum (EPA ICR No. 1715.03), EPA has determined that this rulemaking is not likely to result in a significant impact on a substantial number of small entities. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and the Agency.

For the purpose of analyzing the potential impacts of this proposed rule on small entities, EPA used the definition for small entities that is found in section 601 of the RFA. Under section 601, ''small entity'' is defined as: (1) A small business that meets Small Business Administration (SBA) size standards codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The SBA size standards for the small businesses potentially affected by this proposed rule is 500 employees or less for lead abatement firms whose primary activity is classified as environmental remediation (NAICS code 562910), and revenues of $5 million or less for firms that are accredited to provide lead-based paint training (NAICS code 611519). Since SBA recently amended its small business size standards, which previously classified small business sizes according to the Standard Industrial Classification (SIC) system, to classify small business sizes according to the NAICS system, the analysis for the Lead Abatement Training and Certification Final Rule uses the SBA size standards that were in place in 1996, when that analysis and rule were completed. Although it is possible that certain businesses could gain or lose ''small'' status as a result of SBA's conversion to NAICS, EPA does not believe that any such changes would affect its conclusion to certify under the RFA, because the incremental costs per entity are not significant, regardless of the entity's size. By definition, individuals, States and Indian tribes are not considered small entities under the RFA.

This rule only applies in those States that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies if that State chooses to seek certification to perform lead abatement activities or accreditation to provide lead training. As such, small governmental jurisdictions are only impacted if there isn't a State authorized program and then only if the small governmental entity chooses to seek certification to perform lead abatement activities or accreditation to provide lead training on their own.

Small abatement firms and training providers are only impacted if there isn't an authorized State program in their State, and then only if they seek certification to perform lead abatement activities or accreditation to provide lead training. EPA estimates that, in EPA administered states, there could be approximately 1,167 abatement firms with 15.36 notifications per firm each year, and approximately 51 training providers with an estimated 17.93 notifications in the first year and an estimated 4 notifications in subsequent years.

The estimated average cost per notification for abatement firms is approximately $5, with an estimated total cost per entity of approximately $75. The estimated average cost per notification for training providers is approximately $32, with an estimated total cost per entity of approximately $298 in the first year and approximately $67 in subsequent years. EPA believes that the impact of these costs would be

proportional for both small and large firms, and that the impacts may be slightly lower for small governmental jurisdictions that fund abatement work due to lower wage rates and overhead expenses. Overall, EPA believes that these costs would not result in a significant impact on affected small entities.

Small non-profit organizations are only impacted if they seek certification to perform lead abatement activities or accreditation to provide lead training on their own. Although EPA believes that non-profit organizations may seek certification, EPA does not have sufficient information about these organizations or their intentions regarding certification or accreditation. Nevertheless, given the low costs for notification and the relatively small number of non-profit organizations EPA believes are likely to seek certification or accreditation, EPA does not believe that this affects the Agency's determination that this rule is not expected to have a significant impact on a substantial number of small entities.

Any comments regarding the impacts that this action may impose on small entities, should be submitted to the Agency in the manner specified under Unit I.C. In addition, information relating to this determination will be provided to the Chief Counsel for Advocacy of the Small Business Administration upon request, and is included in the public version of the official record for this rulemaking.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (the ICR Addendum (EPA ICR No. 1715.03)), a copy of which has been placed in the public version of the official record described in Unit I.B.2., and which may also be accessed electronically on EPA's homepage at http://www.epa.gov/icr.

The information requirements contained in this proposal are not effective until promulgation and OMB approval, which is represented by a currently valid OMB control number. An agency may not conduct or sponsor and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are maintained in a list at 40 CFR part 9.

The proposed rules contain four requirements that would impose paperwork burdens: reading and interpreting the proposed rules, the notification of lead-based paint abatement activities, the notification of lead-based paint activities training courses, and notification following completing of lead-based paint activities training courses. Paperwork burdens are estimated to be 21,254 total hours for the first year of implementation, and 19,048 hours annually in subsequent years.

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. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments, submitted as instructed under Unit I.C., are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. The final rule will respond to any OMB or public comments received on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law No. 104–4), EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule applies only in States and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those States and Indian Tribes who choose to seek certification to perform lead abatement activities or accreditation to provide lead training. As such, the rule will not impose an enforceable duty on any State, local or Tribal governments. Since, this proposed rule is estimated to cost approximately $439,573 in the first year of implementation, and $395,157 annually in subsequent years, it is not expected to result in expenditures by the private sector of $100 million or more in any given year. As a result, the UMRA requirements in sections 202, 204, and 205 do not apply to this proposed rule.

This proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, no action is needed under section 203 of the UMRA.

E. Executive Orders 13084 and 13175

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), 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. If the mandate is unfunded, EPA must provide OMB, 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 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, because this proposed rule applies only in Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those Indian Tribes who choose to seek certification to perform lead abatement activities or accreditation to provide lead training. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

On November 6, 2000, the President issued Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249). Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 as of that date.

EPA developed this proposed rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. EPA believes that the differences between the Executive Order do not affect the Agency's activities for this proposed rule. EPA will, however, analyze and fully comply with the requirements of Executive Order 13175 before promulgating the final rule.

F. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications, because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule applies only in States that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those States who choose to seek certification to perform lead abatement activities or accreditation to provide lead training.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with the States at meetings of the Forum on State and Tribal Toxics Action and the annual EPA meeting with State Lead Program representatives.

G. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency's analysis has determined that this proposed action has no disproportionate impact on minority or low income populations.

H. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that (1) is economically significant as defined under OMB's guidance related to section 3(f)(1) of Executive Order 12866, and (2) addresses an environmental health or safety risk that EPA has reason to believe has 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 Executive Order 13045 because it is not an ''economically significant regulatory action'' as defined by Executive Order 12866 (see Unit IV.A.). Although this proposed rule is associated with EPA's overall lead-based-paint management program which is designed to reduce health risks to children, this rule itself simply establishes an Agency notification procedure and does not directly address environmental health or safety risk. This proposed rule does, however, help to further the Agency's efforts to prevent lead poisoning in children under the age of six by supporting the Agency's implementation of the mandate in Title X, which requires that lead abatement professionals involved in inspecting, assessing or removing lead-based paint, dust or soil be trained and certified to conduct these activities.

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The Agency invites comment on the potential use of voluntary consensus standards in this rulemaking, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

J. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the Attorney General's ''Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order.

K. Executive Order 12988

In issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

List of Subjects in 40 CFR Part 745

Environmental protection, Fees, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: January 16, 2001.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 745 be amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 would continue to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2615, 2681–2692, and 42 U.S.C. 4852d.

2. In § 745.223 by adding in alphabetical order definitions for ''Business day''; ''Lead abatement professional''; ''Lead-based paint activities courses''; and ''Training provider'' to read as follows:

§ 745.223 Definitions.

* * * * *

Business day means Monday through Friday with the exception of Federal holidays.

* * * * *

Lead abatement professional means an individual certified to conduct lead-based paint activities under § 745.226 as a worker, supervisor, project designer, inspector, or risk assessor.

* * * * *

Lead-based paint activities courses means training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

* * * * *

Training provider means any business entity accredited under § 745.225 that offers lead-based paint activities courses.

* * * * *

3. In § 745.225 by adding paragraphs (c)(13) and (c)(14) to read as follows:

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

* * * * *

(c) * * *

(13) The training manager shall provide notification of lead-based paint activities courses offered.

(i) The training manager shall provide the agency with notice of all lead-based paint activities courses offered. The original notice must be received by the agency at least 10 business days prior to offering any lead-based paint activities course.

(ii) The training manager shall provide the agency updated notice when lead-based paint activities courses will begin on a date other than the one specified in the original notification, as follows:

(A) For lead-based paint activities courses beginning prior to the original start date an updated notice must be received by the agency at least 10 business days before the revised start date.

(B) For lead-based paint activities courses beginning after the original start date an updated notice must be received by the agency at least 2 business days before the original start date.

(iii) The training manager shall update the agency of any change in location of lead-based paint activities courses at least 10 business days prior to the scheduled course start date.

(iv) The training manager shall also update the agency regarding any course cancellations, or any other change to the original notice. Updated notices must be received by the agency at least 2 business days prior to the scheduled course start date.

(v) Each notice, including updates, shall include the following:

(A) Notification type (original, update, cancellation).

(B) Training program name, EPA accreditation number, address, and phone number.

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(D) Date(s) and time(s) of training.

(E) Training location(s) phone number, and street address.

(F) Principal instructors name.

(G) Training manager's name and signature.

(vi) Notification shall be accomplished using any of the following methods: written notice, or by E-mail. All notices submitted by E-mail must be followed with written notice within 24 hours of submission. Written notification of lead-based paint activities course schedules can be accomplished by using either the sample form titled ''Lead-based Paint Activities Training Course Schedule'' or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the agency receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1–800–424–LEAD, or on the Internet at http://www.epa.gov/lead.

(vii) Lead-based paint activities courses shall not begin on a date, or at a location other than that specified in the original notice unless an updated notice identifying a new date or location is submitted, in which case the course must begin on the date and location specified in the updated notice.

(viii) No training program shall provide lead-based paint activities courses without first notifying the agency of such activities in accordance with the requirements of this paragraph.

(14) The training manager shall provide notification following completion of lead-based paint activities courses.

(i) The training manager shall provide the agency notice after the completion of any lead-based paint activities course which shall be received by the agency no later than 10 business days following course completion.

(ii) The notice shall include the following:

(A) Training program name, EPA accreditation number, address, and phone number.

(B) Course discipline and type (initial/refresher).

(C) Date(s) of training.

(D) The following information for each student who took the course:

(*1*) Name.

(*2*) Address.

(*3*) Social security number.

(*4*) Course completion certificate number.

(*5*) Student test score.

(E) Training manager's name and signature.

(iii) Notification shall be accomplished using any of the following methods: written notice, or by E-mail. All notices submitted by E-mail must be followed with written notice within 24 hours of submission. Written notification following lead-based paint activities training courses can be accomplished by using either the sample form titled ''Lead-based Paint Activities Training Course Follow-up'' or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the agency receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1–800–424–LEAD, or on the Internet at http://www.epa.gov/lead.

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4. In § 745.227 by revising paragraph (e)(4) to read as follows:

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

* * * * *

(e) * * *

(4) A certified firm shall notify EPA of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (e)(4)(ii) of this section, the agency must be notified prior to conducting lead-based paint abatement activities. The original notice must be received by the agency at least 10 business days before lead-based paint abatement activities begin.

(ii) Notice for abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, tribal, or local emergency abatement order must be received by the agency as early as possible before, but not later than the day lead-based paint abatement activities begin. Documentation showing evidence of an EBL determination or a copy of the Federal/State/tribal/local emergency abatement order must be included in the

written notification to take advantage of this abbreviated notification period.

(iii) Updated notice of a new start date must be provided to the agency for lead-based paint abatement activities that will begin on a date other than the date specified in the original notification notice, as follows:

(A) For lead-based paint abatement activities beginning prior to the original start date an updated notice must be received by the agency at least 10 business days before the revised start date.

(B) For lead-based paint abatement activities beginning after the original start date an updated notice must be received by the agency at least 2 business days before the original start date.

(iv) The certified firm shall update the agency of any change in location of lead-based paint abatement activities at least 10 business days prior to the project start date.

(v) The certified firm shall also update the agency regarding the cancellation of any lead-based paint abatement activities, or other significant changes including, but not limited to, when the square footage or acreage to be abated changes by at least 20 percent. This updated notice must be received by the agency at least 2 business days prior to the project start date.

(vi) The following shall be included in each notice:

(A) Notification type (original, updated, cancellation).

(B) Date when lead-based paint abatement activities will commence.

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgement).

(D) Firm's name, EPA certification number, address, phone number.

(E) Type of building (e.g. single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(F) Property name (if applicable).

(G) Property address including apartment or unit number (if applicable) for abatement work.

(H) Documentation showing evidence of an EBL determination or a copy of the Federal/State/tribal/local emergency abatement order, if applicable.

(I) Name, EPA certification number, and signature of the certified supervisor.

(J) Approximate square footage/acreage to be abated.

(K) Brief description of abatement activities to be performed.

(vii) Notification shall be accomplished using any of the following methods: written notice, or by E-mail. All notices submitted by E-mail must be followed by written notice within 24 hours of submission. Written notification can be accomplished using either the sample form titled ''Notification of Lead-based Paint Abatement Activities'' or similar form. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (Persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that the agency receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1–800–424–LEAD, or on the Internet at http://www.epa.gov/lead.

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original, or updated notice, in the event of changes to the original notice.

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying the agency of such activities according to requirements of this paragraph.

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[FR Doc 01–1797 Filed 1–17–01; 4:34 p.m.]

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Federal Register

Monday,

January 22, 2001

Part XV

Small Business Administration

13 CFR Part 108

New Markets Venture Capital Program; Interim Final Rule

New Markets Venture Capital Program; Notice of Funds Availability Inviting Applications; Notice

SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

New Markets Venture Capital Program

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The U.S. Small Business Administration (''SBA'') is adding a new Part 108 to implement the New Markets Venture Capital Program Act of 2000 (''the Act''). The Act authorizes SBA to issue regulations necessary to implement the program. The regulations set forth the requirements for:

Newly-formed venture capital companies to qualify to become New Markets Venture Capital (''NMVC'') companies to make developmental venture capital investments in smaller enterprises located in low-income geographic areas and provide operational assistance to such enterprises receiving such investments; and

Existing Specialized Small Business Investment Companies (''SSBICs'') to qualify for grants to provide operational assistance to smaller enterprises located in low-income geographic areas and which such SSBICs have financed or expect to finance.

SBA will begin accepting applications for this program immediately. See Notice of Funds Availability published in today's **Federal Register**.

EFFECTIVE DATE: This regulation becomes effective on February 21, 2001.

DATES: Submit comments on or before March 23, 2001.

ADDRESSES: Written comments should be sent to Austin Belton, Investment Division, Office of New Markets Venture Capital, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Austin Belton, Director, Office of New Markets Venture Capital, 202–205–6510.

SUPPLEMENTARY INFORMATION:

I. Background

The New Markets Venture Capital Program Act of 2000 (''the Act'') was created by the Consolidated Appropriations Act of 2001, Pub. L. No. 106–554, enacted December 21, 2000. Congress recognized that despite the nation's overall economic prosperity, many underserved areas in America have not experienced such prosperity and millions of Americans living in these areas do not have access to jobs or entrepreneurial opportunities. It enacted the New Markets Venture Capital (''NMVC'') Program to help create an economic infrastructure in such underserved areas by encouraging business growth through program-supported investment. This type of investing is known in the community development venture capital industry as ''double bottomline'' investing, because the investments have both an anticipated financial and social return. Social returns include creating sustainable jobs at businesses receiving investments from NMVC companies, and encouraging such businesses to provide much-needed new products and services within underserved areas.

Congress noted that between 1997 and 1998, the median income for the nation's households rose 3.5 percent in real terms, yet 12.7 percent of Americans (34.5 million people) still live below the poverty line. Many of these Americans live in inner city and rural areas, where job opportunities are scarce and there is little to attract small business investors. In rural and urban communities, poverty remains a persistent problem. Job growth is well below the national average, with unemployment at or above 14%. Unemployment is 7.5% in the African American urban community, and is 6.4% in the Hispanic urban population; both are nearly double the national average. Despite these statistics, Congress found that it is not enough to create jobs in these pockets of poverty, rather these communities need a new economic infrastructure to enable them to develop their full potential and participate fully in the economic mainstream. The NMVC program will encourage the growth of such an infrastructure by supporting new equity capital investments by NMVC companies and SSBICs and by providing operational assistance to smaller enterprises located in low-income geographic areas whose growth will foster the creation of wealth and job opportunities in such areas.

SBA will enter into participation agreements with NMVC companies to fulfill these statutory purposes. The Act authorizes SBA to guarantee debentures of NMVC companies. Such debentures leverage the private capital that NMVC companies must raise and enable them to make the equity investments in low-income geographic areas contemplated by the Act. The Act also authorizes SBA to provide grants to NMVC companies to provide operational assistance to smaller enterprises in which they invest. In addition, the Act enhances the ability of existing SSBICs to invest in smaller enterprises in low-income areas by giving them grants to provide operational assistance to such enterprises in connection with such investments.

SBA intends to enter into participation agreements with NMVC companies that have a solid business plan for making investments in the low-income geographic areas targeted by the Act, and that have the most likelihood of expanding economic opportunities in such areas.

II. Section by Section Analysis

The following is a section by section analysis of SBA's regulations to add a new part 108 to title 13 of the Code of Federal Regulations to implement the Act.

A. *General Information About the Regulations.*

1. *Low-Income Geographic Areas.* The benefits of the NMVC program are targeted toward low-income geographic areas. SBA's definition of ''Low-Income Geographic Areas'' in section 108.50 mimics the definition of the same term in section 351(3) of the Small Business Investment Act of 1958, as amended by the Act (the ''SBIAct''). SBA wishes to educate the public about the areas identified by Congress that will receive the benefits of the NMVC program. This will allow the public to better understand the impact of the NMVC program. Accordingly, SBA provides the following information concerning how you, a member of the public, may determine which geographic areas fall within the statutory definitions.

The Act sets forth six bases for determining low-income geographic areas.

(1) *Any census tract or equivalent county division as defined by the Bureau of the Census of the United States Department of Commerce in which the poverty rate is 20 percent or more.* The Bureau of the Census is the Federal agency responsible for gathering data regarding population and poverty levels. To determine whether a particular census tract or equivalent county division meets this criteria, you can visit the Bureau of the Census web site at http://www.census.gov/geo/www/ezstate/poverty.html. Data on this web site is based on data from the Bureau of the Census CPH–3 series of publications from the ''1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas.'' The ''1990 Population'' and ''Land Area (Square Miles)'' columns are from Table 1 of the CPH–3 reports. The columns ''Persons for Whom Poverty Status Determined'' and ''Percent Below Poverty Level'' are from CPH–3 Table 19. You can view this same information by visiting any local Federal Depository

Library. For the location of the nearest Federal Depository Library, call toll-free 1–888–293–6498 or contact the Bureau of the Census, Washington, D.C. 20233. These resources list the poverty rate for each census tract and equivalent county division within each state. You will need to look for only those tracts or divisions in which the poverty rate is 20 percent or more to determine the areas that fall within a low-income geographic area for purposes of the NMVC program.

(2) *Any census tract or equivalent county division as defined by the Bureau of the Census that is located in a metropolitan area and in which 50 percent or more of the households in that tract or division have an income below 60 percent of the area median gross income.* This criteria corresponds to the definition of ''qualified census tract'' as set forth in the Low Income Housing Tax Credit (LIHTC) program under § 42 of the Internal Revenue Code. The Department of Housing and Urban Development (HUD) implements the LIHTC program. The Secretary of HUD designates the qualified census tracts by Notice published periodically in the **Federal Register**. These notices are titled ''Statutorily Mandated Designation of Qualified Census Tracts and Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986.'' The notice identifies qualified areas by census tract or division number. You may find a list and map of all tract and division numbers by visiting the Bureau of the Census web site at: http://www.census.gov.

You can find HUD's most recent Notice regarding the LIHTC program at 60 FR 21246 (May 1, 1995), or by visiting HUD's web site at: http://www.huduser.org/datasets/qct/dda2000.html. You can view this same information by visiting any local Federal Depository Library. For the location of the nearest Federal Depository Library, call toll-free 1–888–293–6498 or contact the Bureau of the Census, Washington, DC 20233.

(3) *Any census tract or equivalent county division as defined by the Bureau of the Census that is not located in a metropolitan area and in which the median household income for such tract or division does not exceed 80 percent of the statewide median household income.* The Bureau of the Census is the Federal agency responsible for gathering data regarding households and income. You will need to put together several pieces of information in order to determine whether a particular tract or division meets this criteria.

First, you must identify a tract or division number. You may find a list and map of all tract and division numbers by visiting the Bureau of the Census web site at: http://www.census.gov.

Second, you must determine whether the tract or division is located within a metropolitan area. You may find a list of all metropolitan areas in Bureau of the Census publication ''State and Metropolitan Area Databook 1997–98,'' Table B–1. This publication is available on the Bureau of the Census web site at: http://www.census.gov/prod/3/98pubs/smadb-97.pdf. (You need Adobe Acrobat Reader in order to view this publication.) If your census tract or division is not included in this Table, then it is not located within a metropolitan area.

Third, you must determine the median household income for your tract or division. The necessary income statistics for this determination are available in Bureau of the Census ''Summary Tape File (STF) 3A,'' Table P80A. You can access this information at the Bureau of the Census web site at: http://venus.census.gov/cdrom/lookup.

Fourth, you must determine whether the median household income for your tract or division exceeds 80 percent of the statewide median household income. You may find median household income statistics, by state, in Bureau of the Census publication ''Historical Income Tables—Households,'' Table H–8. You may view this Table at the Bureau of the Census web site at: http://www.census.gov/hhes/income/histinc/h08.html. All of this Bureau of the Census statistical information is available from any local Federal Depository Library. For the location of the nearest Federal Depository Library, call toll-free 1–888–293–6498 or contact the Bureau of the Census, Washington, DC 20233.

(4) *Any area located within a HUBZone.* You may find out if an area is located within a HUBZone by visiting SBA's web site at: http://eweb1.sba.gov/hubzone/internet/general/findout.cfm, or visiting or contacting your nearest SBA office.

(5) *Any area located within an Urban Empowerment Zone (''EZ'') or Urban Enterprise Community (''EC'').* You may find out whether an area is located within an Urban EZ or EC by visiting HUD's web site at: http://www.hud.gov/cpd/ezec/, or contacting HUD.

(6) *Any area located within an Rural EZ or Rural EC.* You may find out whether an area is located within a Rural EZ or EC by visiting the United States Department of Agriculture's web site at: http://www.ers.usda.gov/epubs/other/typolog, or contacting the Department of Agriculture.

2. *Regulations modeled after SBIC regulations.*

As you read through the section by section analysis of particular regulations, you will see that we modeled many of these regulations on similar regulations governing SBA's Small Business Investment Company (''SBIC'') program, found in part 107 of this title. In addressing the challenge of implementing the NMVC program, SBA is able to draw upon the experience that it has gained over the last 43 years in administering the SBIC program.

The SBIC program was created by the Small Business Investment Act of 1958 in response to a Federal Reserve study finding that small businesses in general were unable to obtain the long-term debt and equity funds that they needed for success. The basic objective of the program is to attract and supplement private capital, managed by private investment managers, to meet that need. SBA licenses such companies as SBICs, regulates their activities to ensure that they are financially sound and serve the program's public policy objectives, and supplements their private capital by guaranteeing debentures or other securities that they issue.

The SBIC program has been extraordinarily successful in recent years and today represents a major factor in small business financing. It is estimated that 34 percent of all companies receiving institutional venture capital in 1999 obtained it from an SBIC. In fiscal year 2000, SBICs invested a record $5.5 billion in more than 3,000 small growth companies. This was accomplished with a budget appropriation of just $24.3 million.

A key strength of the SBIC program lies in the fact that all investment decisions are made by private individuals with their own money at first risk. However, this also represents a limitation in that such investment activities are profit driven and few of the small businesses being served are located in urban or rural areas. Urban and rural investments typically are smaller and more costly to make, and they require significantly more assistance over the investment period than most SBIC investments. At the same time, they generally offer a more limited profit potential to the investor. The NMVC program addresses these factors by adding to the SBIC structure an operational assistance grant subsidy and by recruiting managers and investors that have an economic development objective in addition to their financial one.

Because of these many similarities between SBICs and NMVC companies and between these two venture capital

programs, SBA will incorporate into the NMVC program many of the SBIC regulations that SBA believes are fundamental to the safety and soundness of the SBIC program.

3. *Section-by-section analysis.*

Sections 108.10 through 108.50 briefly describe the NMVC program, state the legal basis for the program, definitions, and provide guidance on how to read part 108. Most of the definitions come directly from part 107 of this title, which governs the SBIC program. Most of the newly defined terms come directly from the Act, and SBA has not supplemented or modified them. SBA also sets forth several new definitions, including terms ''Low-Income Enterprise'' and ''Low-Income Investment'' as a shorter way to describe equity capital investments in a smaller enterprise that, at the time of the initial financing, has its principal office located in a low-income geographic area.

Sections 108.100 through 108.160 describe the qualifications for the NMVC program. NMVC companies must be newly-formed, for-profit entities. SBA requires that NMVC companies be organized under state law and be either corporations, limited liability companies, or limited partnerships. They must have qualified management, have economic development as their primary mission, and identify particular low-income geographic areas in which they propose to focus their investment activities. SBA models these regulations on the SBIC program, including the requirements that NMVC companies must have management and ownership diversity and that SBA will require pre-approval of all management expenses of a NMVC company (see §§ 107.100 through 107.160 of this title).

Sections 108.200 through 108.240 address capitalization of an NMVC company, including minimum capital requirements, permitted sources of capital, and limitations on non-cash contributions to capital. These regulations also are modeled on similar regulations in the SBIC program (see §§ 107.200 through 107.250 of this title).

Sections 108.300 through 108.330 sets forth policies and procedures for application for designation as a NMVC company. SBA will allow submission of applications for participation in the NMVC program only during a specific application period, to be set forth in a Notice of Funds Availability subsequently published in the **Federal Register**, as opposed to a rolling admissions process. SBA will use this method of selecting applicants for three reasons. One reason is that SBA believes this method will enable SBA to achieve the statutory directive of ensuring, to the extent possible and given the applications received, nationwide availability of developmental venture capital. SBA will compare applications both for quality and other criteria described in the regulations, and for the geographic areas they intend to cover so as to choose the best applications for each geographic area and avoid duplication within specific geographic areas. Another reason is that SBA has received one-year appropriated funds for operational assistance grants, and the statute requires SBA to distribute available appropriated funds evenly among NMVC companies and SSBICs that apply for such grants. (See discussion of §§ 108.2000 through 108.2040 for more information about how SBA will administer the operational assistance grant program.) Submission of all applications for these grant funds at the same time will allow SBA to evenly distribute these funds among all eligible recipients. Third, SBA believes this procedure will allow SBA to orderly administer appropriated funds it may receive in subsequent fiscal years, by allowing SBA to open up the NMVC program to new rounds of applicants.

SBA will require applicants for participation in the NMVC program to submit an application, similar to the application for the SBIC program but which also includes the requirement for a comprehensive business plan. Many of the topics SBA will require applicants to include in their business plans are outlined in section 354(b) of the Act regarding application for the NMVC program. In addition, SBA will use the following additional topics: market analysis of the specific low-income areas towards which the applicant proposes to target its investments and other activities, operational capacity and investment strategies, plans for raising capital and matching funds for operational assistance grants, and projected amount of investment in low-income areas as opposed to outside those areas. Based in part on the experience of other Federal agencies with similar economic development programs, SBA believes these additional topics will allow SBA to ensure that applicants understand the objectives of the NMVC program and have a good plan for accomplishing those objectives and for creating and maintaining a viable investment fund.

SBA also will assess a fee for application for participation in the NMVC program to ensure that applicants are professional venture capital firms committed to participate in the program.

Sections 108.340 through 108.395 describe SBA's evaluation criteria and selection process for participation in the NMVC program. SBA will consider ten criteria in its evaluation and selection of applicants for participation in the NVMC program. Most of the specified criteria are set forth in the Act. SBA will use the following additional selection criteria not specifically described in the Act: The quality of the applicant's business plan in terms of meeting the objectives of the program; the strength and likelihood for success of the applicant's operations and investment strategies; the need for developmental venture capital investments in the geographic areas in which the applicant proposes to concentrate its activities and the extent of the applicant's understanding of the markets in such geographic areas. Based in part on the experience of other Federal agencies with similar economic development programs, SBA believes these additional evaluation criteria are effective indicators of whether the objectives of the NMVC program will be met.

The Act provides for SBA to conditionally approve companies for participation in the NMVC program, based on SBA's evaluation of their applications. Conditionally approved companies must raise the required amounts of capital and of matching funds for the operational assistance grant award from SBA within a time period specified by SBA. As provided in the Act, SBA will finally approve as NMVC companies all conditionally approved NMVC companies that raise the required amount of capital within the time period specified by SBA and sign a participation agreement with SBA. The regulations also set forth procedures under which SBA may grant to conditionally approved companies, as provided in the Act, an exception to the requirement to raise all of their required matching funds for their operational assistance grants before SBA designates them as finally approved NMVC companies.

Sections 108.400 through 108.470 describe SBA's requirements for changes in ownership, control, or structure of a NMVC company. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.400 through 107.475 of this title).

Sections 108.500 through 108.585 describe SBA's requirements for managing the operations of a NMVC company. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.500 through 107.590 of this title).

Sections 108.600 through 108.680 describe SBA's record keeping, record

retention, and reporting requirements for NMVC companies. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.600 through 107.680 of this title). SBA also will require each NMVC company to provide reports concerning the community development impact of each investment it makes, as well as reports on its administration and use of grant funds as required by Circular A–110 of the Office of Management and Budget, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations.'' SBA anticipates that to the extent not inconsistent with SBA's regulations for the NMVC program, NMVC companies' administration and use of grant funds will be subject to OMB Circular A–110 and to Part 31 of the Federal Acquisition Regulations, 48 CFR 31.000 et seq., ''Contract Cost Principles and Procedures.'' OMB Circular A–110 is optional for use in connection with grants to commercial organizations. SBA will apply it to NMVC companies in order to take advantage of existing and well-known grant administrative procedures and policies to facilitate SBA's orderly administration of grants to NMVC companies. (See the discussion of §§ 108.2000 through 108.2040 concerning applicability of these same procedures and policies to grants to SSBICs.)

Sections 108.690 through 108.692 describe SBA's requirements for SBA's examinations of NMVC companies. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.690 through 107.692 of this title).

Sections 108.700 through 108.885 describe SBA's requirements for determining the eligibility of financings of small businesses by NMVC companies, and regarding types of allowable financings. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.700 through 107.885 of this title).

Section 108.710 sets forth the requirement that at the close of each year, 80 percent of the concerns that NMVC companies have financed must be smaller enterprises that, as of the time of the initial financing, had their principal office in a low-income geographic area and in which the NMVC companies have made equity capital investments as defined in the regulations (see § 108.50). This regulation implements the requirement outlined in the definition of ''participation agreement'' in section 351(6)(B) of the SBIAct. SBA interprets this statutory section as requiring 80 percent of the smaller enterprises in which a NMVC company invests, as opposed to 80 percent of the dollars invested by the NMVC company. SBA believes that this interpretation of the 80 percent requirement gives the NMVC company maximum flexibility to make other investments that will ensure the overall economic viability of its fund.

Sections 108.1100 through 108.1720 describe SBA's requirements and procedures for NMVC companies to obtain leverage from SBA and the procedures governing how SBA will fund leverage. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.1100 through 107.1720 of this title).

Sections 108.1810 through 108.1840 describe defaults by NMVC companies on the terms and conditions governing their participation in the NMVC program, and SBA's remedies upon such defaults. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.1810 through 107.1840 of this title).

Section 108.1900 concerns termination by a NMVC company of its participation in the NMVC program. This regulation is modeled after a similar regulation for the SBIC program (see § 107.1900 of this title).

Sections 108.1910 through 108.1930 address miscellaneous issues, including application for an exemption from regulatory requirements and the effect of regulation changes on transactions previously consummated. These regulations are modeled after similar regulations for the SBIC program (see §§ 107.1910 through 107.1930 of this title).

Section 108.1940 sets forth procedures under which SBA may designate additional census tracts or equivalent county divisions as low-income geographic areas. This regulation implements the authority given to SBA's Administrator in section 351(3)(A)(iii) of the SBIAct. SBA has designed these procedures to allow for maximum opportunity by interested members of the public to ask SBA to designate specific census tracts or equivalent county divisions as additional low-income geographic areas.

Sections 108.2000 through 108.2040 sets forth requirements and procedures for operational assistance grants to both NMVC companies and to SSBICs. SBA will award such grants only after receiving and evaluating applications in response to a Notice of Funds Availability published in the **Federal Register**. SBA will award grants to SSBICs and to NMVC companies in such a way as to promote developmental venture capital investments nationwide and in both urban and rural areas.

SBA also will require SSBICs to provide reports on its administration and use of grant funds as required by Circular A–110 of the Office of Management and Budget, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations.'' SBA anticipates that to the extent not inconsistent with these regulations, SSBICs' administration and use of grant funds will be subject to OMB Circular A–110 and to part 31 of the Federal Acquisition Regulations, 48 CFR 31.000 *et seq.*, ''Contract Cost Principles and Procedures.'' OMB Circular A–110 is optional for use in connection with grants to commercial organizations. SBA will apply it to SSBICs in order to take advantage of existing and well-known grant administrative procedures and policies to facilitate SBA's orderly administration of grants to SSBICs.

III. Justification for Publishing Interim Final Status Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act, 5 U.S.C. 553 and 13 CFR 101.108. The Administrative Procedure Act, however, does provide an exception from that general rule where the agency finds good cause to omit public participation. 5 U.S.C. 553(b)(3)(B). The good cause requirement is satisfied when prior public participation can be shown to be impractical or contrary to the public interest.

To accomplish its statutory mandate, SBA must expeditiously designate and enter into participation agreements with NMVC companies. In December 2000, to address the equity needs of low-income communities, Congress passed and President Clinton signed into law legislation creating the NMVC program. Current funding for these grants lapses if not obligated prior to October 1, 2001. Therefore, SBA must act immediately to make NMVC company designations before that date.

SBA finds that good cause exists to publish this rule as an interim final rule without first soliciting public comment, because advance solicitation of comment is impractical and contrary to the public interest for the following reason. It would be contrary to the public interest to delay the effectiveness of the rule based on the practical necessity of preparing an application for designation as an NMVC company and raising the capital and matching

resources within the timeframe allowed by the appropriation statute for operational assistance grants.

NMVC companies will be newly formed, for-profit investment funds with private management. Their objective will be to promote economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas. NMVC companies will pursue this objective by making equity investments in smaller enterprises, primarily located in low-income geographic areas.

Individuals interested in forming NMVC companies must apply for this designation by submitting to SBA a formal application that provides information about (1) their business plan and management team; (2) the need for developmental venture capital investments in the geographic areas in which they intend to invest; (3) the extent to which they will concentrate their activities on serving these areas and the anticipated impact of their activities on economic opportunities in these areas; (4) their plan for providing operational assistance to their portfolio companies; and (5) their ability to raise the required minimum investment capital and operational assistance funding.

The SBA will select applicants for initial ''conditional'' approval after giving consideration to this information, and the need to locate NMVC companies nationally, and in urban and rural areas.

Further, the conditionally approved NMVC companies must raise a minimum of $5,000,000 in regulatory capital and binding commitments in cash or in kind equal to thirty percent of their regulatory capital for operational assistance to their portfolio companies. SBA will then award matching grants to the NMVC companies for operational assistance. SBA will provide this matching funding in fiscal year 2001 out of current funding appropriated for that purpose.

Therefore, the entities that may develop an application for designation need to know the requirements of the program in time to develop their strategic plans and begin raising required matching funds. Given the short time frame for SBA to collect, evaluate, and select NMVC companies, delay in prescribing the criteria for designating NMVC companies would cause undue burden on these efforts and make it extremely difficult for applicants to develop their strategic plans and raise required matching funds in a timely fashion. Therefore, SBA believes it is impractical and contrary to the public interest to further delay the benefits of the NMVC program.

Although this rule is being published as an interim final rule pursuant to 5 U.S.C. 553(b)(3)(B), comments are hereby solicited from interested members of the public. These comments must be submitted on or before March 23, 2001. SBA may then consider these comments in making any necessary revisions to these regulations.

IV. Regulatory Compliance Section—Compliance With Executive Orders 12866, 12988 and 13132, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule as a ''significant'' regulatory action under Executive Order 12866. A regulatory assessment is set forth below.

Low-income communities in the United States face multiple and varied barriers to sustainable growth. But a common obstacle for virtually all such communities is that they are unable to attract sufficient equity capital and technical assistance for starting and expanding businesses. Federal Reserve Board Chair Alan Greenspan has observed that equity capital is crucial to the existence of an innovative and productive business community, especially in lower-income communities. Yet the existing private venture-capital industry is heavily concentrated in affluent, high technology regions located in only a handful of states.

In order to promote economic development and address the unmet equity needs of smaller businesses located in low-income areas, Congress passed and President Clinton signed into law the legislation creating the NMVC program. SBA will use these regulations to implement and administer the NMVC program. NMVC companies will be newly formed, for-profit investment companies with private management. Their objective will be to create an economic infrastructure in underserved areas. The NMVC companies will accomplish this by making equity investments in smaller enterprises, primarily located in low-income geographic areas. SBA anticipates that this type of investing will generate both financial and social returns. The social returns can include creating sustainable jobs at businesses receiving investments from NMVC companies, and encouraging such businesses to provide much-needed new products and services within underserved areas.

SBA estimates that the NMVC program will cost approximately $1 million annually to administer. The cost to the government includes the costs of staff (including benefits) and all other overhead expenses. The Agency will select participants for the NMVC program and regulate NMVC operations to ensure that public policy objectives are being met. Toward that end, SBA will require NMVC companies to provide regular performance reports and take part in annual financial examinations.

SBA estimates that it will cost an NMVC company approximately $6,000 to apply for designation as an NMVC company, not including a $5,000 application fee. This includes the cost of one staff person at a level comparable to a Federal employee at a GS–13 grade level spending 160 hours to complete the application. After receiving designation as an NMVC company, the annual cost to the NMVC company will be based on compliance with the reporting requirements of the program. The Agency anticipates that compliance with the reporting requirements of the program will cost approximately $1,500. This includes the cost of one staff person at a level comparable to a Federal employee at a GS–13 grade level spending approximately 40 hours preparing the required performance and financial reports. The costs to NMVC companies and SSBICs that choose to participate in the grant aspect of the program include approximately $1,500 to prepare the initial grant application (approximately 40 hours of work), and approximately $600 annually thereafter to prepare the required quarterly status reports (approximately 16 hours of work). Again, these costs are estimated based upon one staff person at a level comparable to a Federal employee at a GS–13 grade level. There is also a fee payable by the NMVC company each time SBA examines the company. This rulemaking action includes a base fee for the examination of $3,500.

SBA believes that there are no alternatives to the planned regulatory action that could more adequately address the equity needs of the nation's low-income areas. In developing the regulations, application package and reporting materials SBA purposefully followed proven industry practices. Based upon the foregoing, SBA believes that it is implementing the congressionally-mandated NMVC program in the most cost effective and efficient manner.

Compliance With Executive Order 12988

SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of Executive Order 12988.

Compliance With Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications because the legislation authorizing it addresses private, for-profit concerns (NMVC companies) working directly with entrepreneurs.

Compliance With Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the collection of information (''collection'') for this program includes the NMVC program application package and reporting and recordkeeping requirements. SBA previously requested from the Office of Management and Budget (''OMB'') an emergency clearance of this collection. OMB reviewed and approved the collection and assigned OMB control number 3245–0332.

Simultaneously with the publication of this rule in the **Federal Register**, SBA will make available to the public the collection on SBA's web site at http://www.sba.gov/inv or you may request a copy by calling Terri Dennin at (202) 205–6234.

The following is a list of sections of this regulation that describe generally the collection requirements for the NMVC program and reasons why SBA believes it needs to collect such information.

I. New Markets Venture Capital Companies

A. Applying for Designation as a NMVC Company

As referenced in § 108.310 (Contents of application) and § 108.320 (Contents of a comprehensive business plan), SBA will request information such as basic identifying data and core data, management and organization information, descriptions of past and present performance in developmental venture capital investments in smaller enterprises and in low-income geographic areas, technical qualifications of the applicant, descriptions of activities proposed using debentures issued by NMVC companies, and reporting capabilities.

SBA needs this information to evaluate applicants and to ensure that selections are made in furtherance of the NMVC program's objectives. SBA understands that the respondents to these requests will be limited to those organizations meeting the requirements set forth in § 108.100 (Business form); § 108.110 (Qualified management); § 108.120 (Economic development primary mission); and § 108.140 (Management and ownership diversity requirement). Based upon the Agency's knowledge of the industry, SBA estimates that approximately 15–20 applicants will apply to participate in the NMVC program. Respondents will need to submit the information referenced in §§ 108.310 and 108.320 only at the time of application to participate in the NMVC program. SBA estimates that it will take respondents 216 hours to complete an application and to fulfill the reporting and record keeping requirements referenced below.

B. New Markets Venture Capital Company Reporting and Recordkeeping Requirements

As referenced in §§ 108.600 to 108.680, SBA will request financial information including, but not limited to, financial statements, economic impact and community development information, and portfolio financing reports and valuations.

SBA needs this information to evaluate the performance and success of NMVC companies in fulfilling the objectives of their participation agreements and their actual venture capital investments in smaller enterprises located in low-income geographic areas.

C. Applying for Operational Assistance Grants

As referenced in § 108.2000 (Operational Assistance grants to NMVC Companies and SSBICs), SBA will request such basic information on NMVC companies which apply for operational assistance grants as how the applicant plans to use the grant funds to provide operational assistance to smaller enterprises in which it will make its investments, including the types of assistance it proposes to provide as well as the entities it intends to use to provide such services; a description of its plans to obtain binding commitments for contributions and the source of those commitments as well as the extent of expressions of interest to commit such funds (including the possible purchase of an annuity) to match SBA's funds. The request for operational assistance grant funds will be part of the applicant's application for designation as a NMVC company.

SBA needs this information to ensure that selections are made in furtherance of the operational assistance grant program's objectives. SBA understands that the respondents to this request will be limited to NMVC companies. Based upon SBA's knowledge of the industry, SBA estimates that approximately 15–20 applicants will apply for operational assistance grants under the NMVC program. Grant recipients will have to comply with the reporting and record keeping requirements as set forth in OMB Circular A–110. SBA estimates that it will take respondents 16 hours annually to comply with the reporting and record keeping requirements related to such grants.

II. Specialized Small Business Investment Companies (''SSBICs'')

A. Applying for Operational Assistance Grants

As referenced in § 108.2000 (Operational Assistance grants to NMVC Companies and Specialized Small Business Investment Companies), SBA will request such basic information on SSBICs which apply for operational assistance grants as how the applicant plans to use the grant funds to provide operational assistance to smaller enterprises in which it will make its investments, including the types of assistance it proposes to provide as well as the entities it intends to use to provide such services; a description of its plans to obtain binding commitments for contributions and the source of those commitments as well as the extent of expressions of interest to commit such funds (including the possible purchase of an annuity) to match SBA's funds.

SBA needs this information to ensure that selections are made in furtherance of the operational assistance grant program's objectives. SBA understands that the respondents to this request will be limited to SSBICs. Based upon SBA's knowledge of the industry, SBA estimates that approximately 5 SSBICs will apply for operational assistance grants under this program. Respondents will need to submit Standard Form 424 to participate in the operational assistance grant program. SBA estimates that it will take respondents 56 hours to apply for an operational assistance grant and to fulfill the reporting and record keeping requirements related to such grants as set out in OMB Circular A–110.

III. Request for Comments

With regard to each collection of information discussed above and contained in the collection itself, SBA is

seeking your comment on the following issues:

(a) Whether the information SBA will request on the application is necessary for SBA's proper implementation and measurement of the performance of the NMVC program;

(b) The accuracy of the burden estimate (time estimated to complete each collection of information request);

(c) Ways to minimize the burden estimates, and

(d) Ways to enhance the quality of the information being collected.

Please send comments on or before March 23, 2001 on the data collection requirements to Austin Belton, Investment Division, Office of New Markets Venture Capital, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

List of Subjects in 13 CFR Part 108

Community development, Government securities, Grant programs—business, Securities, Small businesses.

For the reasons stated in the preamble, the Small Business Administration is adding 13 CFR part 108 as follows:

PART 108—NEW MARKETS VENTURE CAPITAL (''NMVC'') PROGRAM

Sec.

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108.30 Amendments to Act and regulations.
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Authority: 15 U.S.C. 634(b)(6) and Pub. L. 106–544.

Subpart A—Introduction to Part 108

§ 108.10 Description of the New Markets Venture Capital Program.

The New Markets Venture Capital (''NMVC'') Program is a developmental venture capital program for the purpose of promoting economic development and the creation of wealth and job opportunities in low-income geographic areas and among individuals living in such areas. SBA selects and then enters into participation agreements with selected newly formed venture capital companies, and provides leverage in the form of debenture guarantees to such companies to allow them to make equity capital investments in smaller enterprises located in low-income geographic areas. SBA also awards grants to such companies and to Specialized Small Business Investment Companies so that they can provide operational assistance to such smaller enterprises in connection with such investments.

§ 108.20 Legal basis and applicability of this part 108.

The regulations in this part implement Part B of Title III of the Small Business Investment Act of 1958, as amended. All NMVC Companies must comply with all applicable SBA regulations, accounting guidelines and valuation guidelines for NMVC Companies, available from SBA.

§ 108.30 Amendments to Act and regulations.

A NMVC Company is subject to all existing and future provisions of the Act and parts 108 and 112 of title 13 of the Code of Federal Regulations.

§ 108.40 How to read this part 108.

(a) *Center headings.* All references in this part to SBA forms, and instructions for their preparation, are to the current issue of such forms. Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms.* Terms defined in § 108.50 have initial capitalization in this part 108.

(c) *''You.''* The pronoun ''you'' as used in this part 108 means a NMVC Company unless otherwise noted.

Subpart B—Definition of Terms Used in Part 108

§ 108.50 Definition of terms.

Act means the Small Business Investment Act of 1958, as amended.

Affiliate or *Affiliates* has the meaning set forth in § 121.103 of this chapter.

Applicant means any entity submitting an application to SBA for designation as a NMVC Company under this part.

Articles mean articles of incorporation or charter for a Corporate NMVC Company, the partnership agreement or certificate for a Partnership NMVC Company, and the operating agreement or other organizational documents for a LLC NMVC Company.

Assistance or *Assisted* means Financing of or management services rendered to a Small Business by or through a NMVC Company pursuant to the Act and these regulations.

Associate of a NMVC Company means any of the following:

(1) (i) An officer, director, employee or agent of a Corporate NMVC Company;

(ii) A Control Person, employee or agent of a Partnership NMVC Company;

(iii) A managing member of a LLC NMVC Company;

(iv) An Investment Adviser/Manager of any NMVC Company, including any Person who contracts with a Control Person of a Partnership NMVC Company to be the Investment Adviser/Manager of such NMVC Company; or

(v) Any Person regularly serving a NMVC Company on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate NMVC Company or 10

percent of the membership interests of an LLC NMVC Company, or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership NMVC Company. However, neither a limited partner in a Partnership NMVC Company nor a non-managing member in an LLC NMVC Company is considered an Associate if such Person is an entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the NMVC Company and no more than five percent of such Person's net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a NMVC Company.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the NMVC Company).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), ''collectively'' means together with any Person(s) described in paragraphs (1) though (7) of this definition.

(10) For the purposes of this definition, if any Associate relationship described in paragraphs (1) through (7) of this definition exists at any time within six months before or after the date that a NMVC Company provides Financing, then that Associate relationship is considered to exist on the date of the Financing.

(11) If any NMVC Company has any ownership interest in another NMVC Company, the two NMVC companies are Associates of each other.

Capital Impairment has the meaning set forth in § 108.1830(b).

Central Registration Agent or *CRA* means one or more agents appointed by SBA for the purpose of issuing TCs and performing the functions enumerated in § 108.1620 and performing similar functions for Debentures funded outside the pooling process.

Close Relative of an individual means:

(1) A current or former spouse;

(2) A father, mother, guardian, brother, sister, son, daughter; or

(3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

Commitment means a written agreement between a NMVC Company and an eligible Small Business that obligates the NMVC Company to provide Financing (except a guarantee) to that Small Business in a fixed or determinable sum, by a fixed or determinable future date. In this context the term ''agreement'' means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the NMVC Company's obligation to fund the commitment, but these conditions must be outside the NMVC Company's control.

Common Control means a condition where two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more NMVC companies are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent investment advisor or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA.

Community Development Finance means debt and equity-type investments in low-income communities.

Conditionally Approved NMVC Company means a company that—

(1) Has applied for participation as a NMVC Company, and

(2) SBA has conditionally approved to participate in the NMVC program for a specified period of time not to exceed two years, subject to the company fulfilling the requirements to be a NMVC Company within that specified period of time.

Control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a NMVC Company or other concern, whether through the ownership of voting securities, by contract, or otherwise.

Control Person means any Person that controls a NMVC Company, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership NMVC Company;

(2) Any Person serving as the general partner, officer, director, or manager (in the case of a limited liability company) of any entity that controls a NMVC Company, either directly or through an intervening entity;

(3) Any Person that—

(i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership NMVC Company or any entity described in paragraphs (1) or (2) of this definition; and

(ii) Participates in the investment decisions of the general partner of such Partnership NMVC Company;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 50 percent of a Partnership NMVC Company or any entity described in paragraphs (1) or (2) of this definition.

Corporate NMVC Company. See definition of NMVC Company in this section.

Debentures means debt obligations issued by NMVC companies pursuant to section 355 of the Act and held or guaranteed by SBA.

Debt Securities are instruments evidencing a loan with an option or any other right to acquire Equity Securities in a Small Business or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options that you acquire.

Developmental Venture Capital means capital in the form of Equity Capital Investments in Smaller Enterprises made with a primary objective of fostering economic development in Low-Income Geographic Areas.

Distribution means any transfer of cash or non-cash assets to SBA, its agent or Trustee, or to partners in a Partnership NMVC Company, or to shareholders in a Corporate NMVC Company, or to members in an LLC NMVC Company. Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the NMVC Company's non-SBA partners, shareholders, or members.

Equity Capital Investments means investments in the form of common or preferred stock, limited partnership interests, options, warrants, or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Equity Capital Investments must not require amortization. Equity Capital Investments may be guaranteed by one or more third parties; however, neither Equity Capital Investments nor such guarantee may be collateralized or otherwise secured. Investments classified as Debt Securities (see §§ 108.800(b) and 108.815) are not precluded from qualifying as Equity Capital Investments. Equity Capital Investments may provide for royalty payments only if the royalty payments are based on the earnings of the concern.

Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests.

Financing or *Financed* means outstanding financial assistance provided to a Small Business by a NMVC Company, whether through:

(1) Loans;

(2) Debt Securities;

(3) Equity Securities;

(4) Guarantees; or

(5) Purchases of securities of a Small Business or from an underwriter (see § 108.825).

Guaranty Agreement means the contract entered into by SBA which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures and SBA's rights in connection with such guarantee.

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a NMVC Company obtains a written opinion from an investment banking firm acceptable to SBA stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

Institutional Investor means:

(1) *Entities.* Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least $1 million, or such higher amount as is specified in this paragraph (1). (See also § 108.230(c)(4) for limitations on the amount of an Institutional Investor's commitment that may be included in Private Capital.)

(i) A State or National bank, trust company, savings bank, or savings and loan association.

(ii) An insurance company.

(iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 8a–1 *et seq.*).

(iv) A holding company of any entity described in paragraph (l)(i), (ii) or (iii) of this definition.

(v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a State, or any agency or instrumentality of such government unit.

(vi) An employee benefit or pension plan (as defined in the Employee Retirement Income Security Act of 1974, as amended (Pub. L. 93–406, 88 Stat. 829), excluding plans established under section 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. 401(k)), as amended).

(vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, as amended.

(viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than $10 million.

(ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.

(x) An entity whose primary purpose is to manage and invest non-Federal funds on behalf of at least three Institutional Investors described in paragraphs (l)(i) through (l)(ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.

(xi) Any other entity that SBA determines to be an Institutional Investor.

(2) *Individuals.* (i) Any of the following individuals if he/she is also a permanent resident of the United States:

(A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended (15 U.S.C. 77a–77aa)) and whose commitment to the NMVC Company is backed by a letter of credit from a State or National bank acceptable to SBA.

(B) An individual whose personal net worth is at least $2 million and at least ten times the amount of his or her commitment to the NMVC Company. The individual's personal net worth must not include the value of any equity in his or her most valuable residence.

(C) An individual whose personal net worth, not including the value of any equity in his or her most valuable residence, is at least $10 million.

(ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition provided such individual has irrevocably appointed an agent within the United States for the service of process.

Investment Adviser/Manager means any Person who furnishes advice or assistance with respect to operations of a NMVC Company under a written contract executed in accordance with the provisions of § 108.510.

Lending Institution means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or NASDAQ and which has assets in excess of $500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate's sales or business operations.

Leverage means financial assistance provided to a NMVC Company by SBA through the guaranty of a NMVC Company's Debentures, and any other SBA financial assistance evidenced by a security of the NMVC Company.

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

LLC NMVC Company. See definition of NMVC Company in this section.

Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

Loans and Investments means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating concerns acquired, and notes and other securities received, as set forth in the Statement of Financial Position of SBA Form 468.

Low-Income Enterprise means a Smaller Enterprise that, as of the time of the initial Financing, has its Principal Office located in a Low-Income Geographic Area.

Low-Income Geographic Area (''LI Area'') means—

(1) any population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the United

States Department of Commerce for purposes of defining poverty areas), if—

(i) The poverty rate for that census tract is not less than 20 percent;

(ii) In the case of a tract—

(A) That is located within a metropolitan area, 50 percent or more of the households in that census tract have an income equal to less than 60 percent of the area median gross income; or

(B) That is not located within a metropolitan area, the median household income for such tract does not exceed 80 percent of the statewide median household income; or

(C) As determined by the Administrator in accordance with § 108.1940 of this part, a substantial population of Low-Income Individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in that census tract; or

(2) Any area located within—

(i) A Historically Underutilized Business Zone (''HUBZone'') as defined in section 3(p) of the Small Business Act and 13 CFR 126.103;

(ii) An Urban Empowerment Zone or Urban Enterprise Community (as designated by the Secretary of the United States Department of Housing and Urban Development); or

(iii) A Rural Empowerment Zone or Rural Enterprise Community (as designated by the Secretary of the United States Department of Agriculture).

Low-Income Individual means an individual whose income (adjusted for family size) does not exceed—

(1) For metropolitan areas, 80 percent of the area median income; and

(b) For nonmetropolitan areas, the greater of—

(i) 80 percent of the area median income, or

(ii) 80 percent of the statewide nonmetropolitan area median income.

Low-Income Investment means an Equity Capital Investment in a Low-Income Enterprise.

Management Expenses has the meaning set forth in § 108.520.

NAICS Manual means the latest issue of the North American Industrial Classification System Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

New Markets Tax Credit program means the tax credit created by the Consolidated Appropriations Act of 2001, Pub L. No. 106–554, enacted December 21, 2000, to be implemented by the Internal Revenue Service, United States Department of Treasury.

New Markets Venture Capital Company or *NMVC Company* means a corporation (Corporate NMVC Company), a limited partnership organized as required by § 108.160 (Partnership NMVC Company), or a limited liability company (LLC NMVC Company) that—

(a) has been granted final approval by SBA under § 108.390 of this part, and

(b) has entered into a Participation Agreement with SBA. For certain purposes, the Entity General Partner of a Partnership NMVC Company is treated as if it were a NMVC Company (see § 108.160(a).

1940 Act Company means a NMVC Company which is registered under the Investment Company Act of 1940.

1980 Act Company means a NMVC Company which is registered under the Small Business Investment Incentive Act of 1980.

Operational Assistance means management, marketing, and other technical assistance that assists a Small Business with its business development.

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participation Agreement means an agreement between SBA and a company to which SBA has granted final approval under section 108.390 of this part, that—

(a) details the company's operating plan and investment criteria; and

(b) requires the company to make investments in Smaller Enterprises at least 80 percent of which Smaller Enterprises are located in LI Areas.

Partnership NMVC Company. See definition of NMVC Company in this section.

Person means a natural person or legal entity.

Pool means an aggregation of SBA guaranteed Debentures approved by SBA.

Portfolio means the securities representing a NMVC Company's total outstanding Financing of Smaller Enterprises. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

Portfolio Concern means a Small Business Assisted by a NMVC Company.

Principal Office means the location where the greatest number of the concern's employees at any one location perform their work. However, for those concerns whose ''primary industry'' (see 13 CFR 121.107) is service or construction (see 13 CFR 121.201), the determination of principal office excludes the concern's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

Private Capital has the meaning set forth in § 108.230.

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 (17 CFR 230.144) of the Securities Act of 1933, as amended, by the holder thereof, and are of a class which is traded on a regulated stock exchange, or is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended (15 U.S.C. 77b *et seq.*), and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

Regulatory Capital means:

(1) *General.* Regulatory Capital means Private Capital, excluding non-cash assets contributed to a NMVC Company, a Conditionally Approved NMVC Company, or an Applicant, and non-cash assets purchased by a Conditionally Approved NMVC Company or an Applicant, unless such assets have been converted to cash or have been approved by SBA for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowing against such assets shall not constitute a conversion to cash.

(2) *Exclusion of questionable commitments.* An investor's commitment to a NMVC Company, Conditionally Approved NMVC Company, or Applicant is excluded from Regulatory Capital if SBA determines that the collectability of the commitment is questionable.

(3) *Exclusion of amounts designated for Operational Assistance match.* Regulatory Capital excludes any portion of Private Capital that is designated as matching resources in accordance with § 108.2030(b)(3).

Relevant Venture Capital Finance means Equity Capital Investments with the intention of creating wealth and job opportunities in low-income communities.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that a NMVC Company may distribute to investors (including SBA) as a profit Distribution, or transfer to Private Capital.

SBA means the Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Secondary Relative of an individual means:

(1) A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;

(2) An uncle, aunt, nephew, niece, or first cousin; or

(3) A spouse of any person described in paragraph (1) or (2) of this definition.

Small Business means a small business concern as defined in section 103(5) of the Act (including its Affiliates), and which meets the criteria applicable to the Small Business Investment Company program as set forth in part 121 of this chapter.

Smaller Enterprise means any Small Business that:

(1) Together with its Affiliates has a net worth of not more than $6.0 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years no greater than $2.0 million, or

(2) Both together with its Affiliates, and by itself, meets the size standard of § 121.201 of this title at the time of Financing for the industry in which it is then primarily engaged.

Specialized Small Business Investment Companies (*SSBICs*) means any small business investment company that—

(1) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages; and

(2) was licensed under section 301(d) of the Small Business Investment Act, as in effect before September 30, 1996.

Trust means the legal entity created for the purpose of holding guaranteed Debentures and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined by the Secretary of the Treasury at the time Debentures are pooled, taking into consideration the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the maturities of the Trust Certificates being guaranteed by SBA, adjusted to the nearest one-eighth of one percent.

Trust Certificates (TCs) means certificates issued by SBA, its agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures.

Trustee means the trustee or trustees of a Trust.

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468.

Unrealized Appreciation means the amount by which a NMVC Company's valuation of each of its Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with NMVC Company's valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a NMVC Company's valuation of each of its Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with NMVC Company's valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a NMVC Company's Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

Subpart C—Qualifications for the NMVC Program

Organizing a NMVC Company

§ 108.100 Business form.

A NMVC Company must be a newly formed for-profit entity or, subject to § 108.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under State law solely for the purpose of performing the functions and conducting the activities contemplated under the Act. It may be organized as a corporation (''Corporate NMVC Company''), a limited partnership (''Partnership NMVC Company''), or a limited liability company (''LLC NMVC Company'').

§ 108.110 Qualified management.

An Applicant must show, to the satisfaction of SBA, that its current or proposed management is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of businesses contemplated by the Act, these regulations and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, SBA will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with SBA.

§ 108.120 Economic development primary mission.

The primary mission of a NMVC Company must be economic development of one or more LI Areas.

§ 108.130 Identified Low-Income Geographic Areas.

A NMVC Company must identify the specific LI Areas in which it intends to make Developmental Venture Capital investments and provide Operational Assistance under the NMVC program.

§ 108.140 SBA approval of initial Management Expenses.

A NMVC Company must have its Management Expenses approved by SBA at the time of designation as a NMVC Company. (See § 108.520 for the definition of Management Expenses.)

§ 108.150 Management and ownership diversity requirement.

(a) *Diversity requirement.* You must have diversity between management and ownership in order to be a NMVC Company. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section unless SBA approves otherwise.

(b) *Percentage ownership requirement.* No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) *Non-affiliation requirement.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by SBA. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single ''acceptable'' Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are ''acceptable'' for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by state, Federal or other governmental authorities satisfactory to SBA;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to SBA.

(d) *Voting requirement.* The investors required for you to satisfy diversity may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior SBA approval.

(e) *Requirement to maintain diversity.* You must maintain management-ownership diversity while you are a NMVC Company. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify SBA within 10 days; and

(2) Re-establish diversity within six months.

§ 108.160 Special rules for NMVC Companies formed as limited partnerships.

(a) *Entity General Partner.* (1) A general partner which is a corporation, limited liability company or partnership (an ''Entity General Partner'') shall be organized under state law solely for the purpose of serving as the general partner of one or more NMVC companies.

(2) SBA must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner. This provision must be stated in an Entity General Partner's Certificate of Incorporation, operating agreement, limited partnership agreement or other similar governing instrument.

(3) An Entity General Partner is subject to the same examination and reporting requirements as a NMVC Company under sections 361 and 362 of the Act. The restrictions and obligations imposed upon a NMVC Company by §§ 108.1810, 108.30, 108.410 through 108.450, 108.470, 108.500, 108.510, 108.585, 108.600, 108.680, 108.690 through 108.692, and 108.1910 apply also to an Entity General Partner of a NMVC Company.

(4) The general partner(s) of your Entity General Partner(s) will be considered your general partner.

(5) If your Entity General Partner is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in § 108.50.

(b) *Other requirements for Partnership NMVC Companies.* If you are a Partnership NMVC Company:

(1) You must have a minimum duration of 10 years or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due SBA, its agent, or Trustee have been paid, the Partnership NMVC Company may be terminated by a vote of your partners;

(2) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of SBA;

(3) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner pending SBA's written approval of such transfer or succession; and

(4) You must incorporate all the provisions in this paragraph (b) in your limited partnership agreement.

(c) *Obligations of a Control Person.* All Control Persons are bound by the disciplinary provisions of sections 365 and 366 of the Act and by the conflict-of-interest rules under § 108.730. The term NMVC Company, as used in §§ 108.30, 108.460, and 108.680, includes all of the NMVC Company's Control Persons. The conditions specified in § 108.1810 and § 108.1910 apply to all general partners.

(d) *Liability of general partner for partnership debts to SBA.* Subject to section 365 of the Act, your general partner is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage.

(e) *Special Leverage requirement.* Before your first issuance of Leverage, you must furnish SBA with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service or by an opinion of counsel.

Capitalizing a NMVC Company

§ 108.200 Adequate capital for NMVC Companies.

You must meet the requirements of these §§ 108.200–108.240 in order to qualify for designation as a NMVC Company and to receive Leverage.

§ 108.210 Minimum capital requirements for NMVC Companies.

You must have Regulatory Capital of at least $5,000,000 and Leverageable capital of at least $500,000 to become a NMVC Company.

§ 108.230 Private Capital for NMVC Companies.

(a) *General.* Private Capital means the contributed capital of a NMVC Company, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a NMVC Company.

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate NMVC Company, the members' contributed capital of a LLC NMVC Company, or the partners' contributed capital of a Partnership NMVC Company, in each case subject to the limitations in paragraph (c) of this section.

(c) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by a NMVC Company from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly from any Federal agency or department.

(4) Any portion of a commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor's net worth.

(d) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in § 108.240.

(e) *Contributions with borrowed funds.* You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) SBA gives its prior written approval of the capital contribution.

§ 108.240 Limitations on including non-cash capital contributions in Private Capital.

Non-cash capital contributions to a NMVC Company or Applicant are included in Private Capital only if they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value and approved by SBA.

(c) Tangible assets used in your operations, priced at no more than their fair market value.

(d) Other non-cash assets approved by SBA.

Subpart D—Application and Approval Process for NMVC Company Designation

§ 108.300 When and how to apply for designation as a NMVC Company.

(a) *Notice of Funds Availability (''NOFA'').* SBA will publish a NOFA in the **Federal Register**, advising potential applicants of the availability of funds for the NMVC program. An entity may then submit an application for designation as a NMVC Company. When submitting its application, an Applicant must comply with both these regulations and any requirements specified in the NOFA, including submission deadlines. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round.

(b) *Application form.* An Applicant must apply for designation as a NMVC Company using the application packet provided by SBA. Upon receipt of an application, SBA may request clarifying or technical information on the materials submitted as part of the application.

§ 108.310 Contents of application.

Each Applicant must submit a complete application, including the following:

(a) *Amounts.* The Applicant must indicate the amounts of—

(1) Regulatory Capital it proposes to raise;

(2) Binding commitments for contributions in cash or in-kind it proposes to raise, and/or an annuity it proposes to purchase, in accordance with the requirements of § 108.2030, as its matching resources for its Operational Assistance grant award (the aggregate of which must be not less than 30 percent of the Regulatory Capital it proposes to raise under paragraph (a)(1) of this section).

(b) *Comprehensive business plan.* The Applicant must submit a comprehensive business plan covering at least a five-year period, addressing the specific items described in § 108.320, and which demonstrates that the Applicant has the capacity to operate successfully as a NMVC Company.

(c) *New Markets Tax Credit program.* Applicant must address if and to what extent it intends to conform its activities to the New Markets Tax Credit laws. If Applicant plans to seek a New Markets Tax Credit, Applicant also must state the amount of tax credit allocation it intends to seek.

§ 108.320 Contents of comprehensive business plan.

(a) *Executive summary.* The executive summary must include a description of—

(1) The Applicant;

(2) Its strategy for how it proposes to make successful Developmental Venture Capital investments in identified LI Areas;

(3) The markets in the LI Areas it proposes to serve; and

(4) How it intends to work with community organizations in and be accountable to the residents of identified LI Areas in order to facilitate its Developmental Venture Capital investments.

(b) *Capacity, skills, and experience of the management team.* An Applicant must provide information generally as to the background, capability, education, reputation and training of its general partners, managers, officers, key personnel, investment committee and governing board members. The Applicant also must provide information specifically on these individuals' qualifications and reputation in the areas of Community Development Finance and/or Relevant Venture Capital Finance, including the impact of these individuals' activities in these areas.

(c) *Market analysis.* An Applicant must provide an analysis of the LI Areas in which it intends to focus its Developmental Venture Capital investments and Operational Assistance to Smaller Enterprises, demonstrating that the Applicant understands the market and the unmet capital needs in such areas and how its activities will meet these unmet capital needs through Developmental Venture Capital investments and will have a positive economic impact on those areas. The analysis must include a description of the extent of the economic distress in the identified LI Areas. An Applicant also must analyze the extent of the demand in such areas for Developmental Venture Capital investments and any factors or trends that may affect the Applicant's ability to make effective Developmental Venture Capital investments.

(d) *Operational capacity and investment strategies.* An Applicant must submit information concerning its policies and procedures for underwriting and approving its Developmental Venture Capital investments, monitoring its portfolio, and maintaining internal controls and operations.

(e) *Regulatory Capital.* An Applicant must include a detailed description of how it plans to raise its Regulatory Capital. An Applicant must discuss its potential sources of Regulatory Capital, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant.

(f) *Plan for providing Operational Assistance.* An Applicant must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it will make Developmental Venture Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and whether and to what extent it intends to provide the Operational Assistance through the use of licensed professionals, either from its own staff or from outside entities.

(g) *Matching resources for Operational Assistance grant.* An Applicant must include a detailed description of how it plans to obtain binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, to match the funds requested from SBA for the Applicant's Operational Assistance grant. If it proposes to obtain commitments for cash or in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). Applicant must discuss its potential sources of matching resources, the estimated timing on raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant. Potential sources of matching resources must satisfy the requirements in § 108.2030(b)(1).

(h) *Projected Amount of Investment in LI Areas.* An Applicant must describe the amount of its total Regulatory Capital and Leverage that it proposes to invest in Smaller Enterprises located in LI Areas, as compared to the amount that it proposes to invest in Small Businesses located outside of LI Areas.

(i) *Projected impact.* An Applicant must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the NMVC program. It must include:

(1) A description of the extent to which it will concentrate its Developmental Venture Capital investments and Operational Assistance activities in identified LI Areas;

(2) An estimate of the social, economic, and community development benefits to be created within identified LI Areas over the next five years or more as a result of its activities;

(3) A description of the criteria to be used to measure the benefits created as a result of its activities;

(4) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the NMVC program.

(j) *Affiliates and business relationships.* Applicant must submit information regarding the management and financial strength of any parent or holding entity, affiliated firm or entity, or any other firm or entity essential to the success of the Applicant's business plan.

§ 108.330 Application fee.

An Applicant must pay to SBA an application processing fee of $5,000, of which $2,000 is payable at the time of application submission and the remaining $3,000 of which is payable if and when SBA designates the Applicant as a NMVC Company.

Subpart E—Evaluation and Selection of NMVC Companies.

§ 108.340 Evaluation and selection—general.

SBA will evaluate and select an Applicant to participate in the NMVC program solely at SBA's discretion, based on SBA's review of the Applicant's application materials, interviews or site visits with the Applicant, and background investigations conducted by SBA and other Federal agencies. SBA's evaluation and selection process is intended to—

(a) Ensure that Applicants are evaluated on a competitive basis and in a fair and consistent manner;

(b) Take into consideration the unique proposals presented by Applicants;

(c) Ensure that each Applicant that SBA designates as a NMVC Company can fulfill successfully the goals of its comprehensive business plan; and

(d) Ensure that SBA selects Applicants in such a way as to promote Developmental Venture Capital investments nationwide and in both urban and rural areas.

§ 108.350 Eligibility and completeness.

SBA will not consider any application that is not complete or that is submitted by an Applicant that does not meet the eligibility criteria described in subpart C of this part. SBA, at its sole discretion, may request from an Applicant additional information concerning eligibility criteria or easily completed portions of the application in order to allow SBA to consider that Applicant's application.

§ 108.360 Evaluation criteria.

SBA will evaluate and select an Applicant for participation in the NMVC program by considering the following criteria—

(a) The quality of the Applicant's comprehensive business plan in terms of meeting the objectives of the NMVC program;

(b) The likelihood that the Applicant will fulfill the goals described in its comprehensive business plan;

(c) The capability of the Applicant's management team;

(d) The strength and likelihood for success of the Applicant's operations and investment strategies;

(e) The need for Developmental Venture Capital investments in the LI Areas in which the Applicant intends to invest;

(f) The extent to which the Applicant will concentrate its activities on serving the LI Areas in which it intends to invest, including the ratio of resources that it proposes to invest in such areas as compared to other areas;

(g) The Applicant's demonstrated understanding of the markets in the LI Areas in which it intends to focus its activities;

(h) The likelihood that and the time frame within which the Applicant will be able to—

(1) Raise the Regulatory Capital it proposes to raise for its investments, and

(2) Obtain the binding commitments for contributions in cash or in-kind and/or an annuity it proposes to obtain as its matching resources for its Operational Assistance grant award;

(i) The strength of the Applicant's proposal to provide Operational Assistance to Smaller Enterprises in which it plans to invest;

(j) The extent to which the activities proposed by the Applicant will promote economic development and the creation of wealth and job opportunities in the LI Areas in which it intends to invest and among individuals living in LI Areas; and

(k) The strength of the Applicant's application compared to applications submitted by other Applicants intending to invest in the same or proximate LI Areas.

§ 108.370 Conditional approval.

From among the Applicants submitting eligible and complete applications, SBA will select a number of Applicants and will conditionally approve such selected Applicants to participate in the NMVC program. SBA will give each such Conditionally Approved NMVC Company a specific period of time, not to exceed two years, to satisfy the requirements to become a NMVC Company.

§ 108.380 Final approval as a NMVC Company.

(a) *General rule.* With respect to each Conditionally Approved NMVC Company, SBA will either:

(1) Grant final approval to participate in the NMVC program and designate such company as a NMVC Company, if such Conditionally Approved NMVC Company:

(i) Within the specific period of time SBA gave to it when SBA conditionally approved it for participation in the NMVC program, has raised:

(A) At least $5,000,000 of Regulatory Capital; and

(B) At least $1,500,000 of matching resources for its Operational Assistance grant award or 30 percent of the Regulatory Capital it raised, whichever is greater; and

(ii) Enters into a Participation Agreement with SBA; or

(2) Revoke SBA's conditional approval of the company, at which time it is no longer a Conditionally Approved NMVC Company and must not participate in the NMVC program or represent itself as a Conditionally Approved NMVC Company.

(b) *Exception to requirement to raise matching resources.*

(1) *General.* At its discretion and based upon a showing of good cause, SBA may consider a Conditionally Approved NMVC Company to have satisfied the requirement in paragraph (a)(1)(i)(B) of this section to raise matching resources in the amount of at least 30 percent of its Regulatory Capital if the Conditionally Approved NMVC Company—

(i) Already has raised at least 20 percent of the total amount of required matching resources; and

(ii) Has a viable plan that reasonably projects its capacity to raise the remainder of the required amount of matching resources.

(2) *Request for exception.* Before the expiration of the time period given to it by SBA to meet the requirements to become a NMVC Company, a Conditionally Approved NMVC Company may submit to SBA a request that SBA grant the exception described in paragraph (b)(1) of this section. Such Conditionally Approved NMVC must present to SBA evidence of good cause for such request, as well as evidence supporting the elements of the exception described in such paragraph.

(3) *No applicability to Regulatory Capital.* The exception described in this section applies only to matching resources for the Operational Assistance grant award. Under no circumstances will SBA designate a Conditionally Approved NMVC Company as a NMVC

Company if such Conditionally Approved NMVC Company does not raise the required minimum amount of Regulatory Capital within the time period SBA gave it to do so.

Subpart F—Changes in Ownership, Structure, or Control

Changes in Control or Ownership of NMVC Company

§ 108.400 Changes in ownership of 10 percent or more of NMVC Company but no change of Control.

You must obtain SBA's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock, partnership capital or membership interests.

§ 108.410 Changes in Control of NMVC Company (through change in ownership or otherwise).

You must obtain SBA's prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by SBA.

§ 108.420 Prohibition on exercise of ownership or Control rights in NMVC Company before SBA approval.

Without prior written SBA approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any meeting of shareholders, partners or members);

(c) Permit the proposed new owner(s) to participate in any manner in the conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, manager, employee or agent); or

(d) Allow ownership or Control to pass to another Person.

§ 108.430 Notification to SBA of transactions that may change ownership or Control.

You must promptly notify SBA as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your capital. If there is any doubt as to whether a particular transaction or event will result in such a change, report the facts to SBA.

§ 108.440 Standards governing prior SBA approval for a proposed transfer of Control.

SBA approval is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by SBA. As a condition of approving a proposed transfer of control, SBA may:

(a) Require an increase in your Regulatory Capital;

(b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by SBA; or

(c) Require compliance with any other conditions set by SBA, including compliance with the requirements for minimum capital and management-ownership diversity as in effect at such time for new NMVC Companies.

§ 108.450 Notification to SBA of pledge of NMVC Company's shares.

(a) You must notify SBA in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged are at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 108.400 or § 108.410, as appropriate.

Restrictions on Common Control or Ownership of Two or More NMVC Companies

§ 108.460 Restrictions on Common Control or ownership of two (or more) NMVC Companies.

Without SBA's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another NMVC Company; or

(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another NMVC Company.

Change in Structure of NMVC Company

§ 108.470 SBA approval of merger, consolidation, or reorganization of NMVC Company.

You may not merge, consolidate, change form of organization (corporation or partnership) or reorganize without SBA's prior written approval. Any such merger or consolidation will be subject to § 108.440.

Subpart G—Managing the Operations of a NMVC Company

General Requirements

§ 108.500 Lawful operations under the Act.

You must engage only in the activities contemplated by the Act and in no other activities.

§ 108.502 Representations to the public.

You may not represent or imply to anyone that the SBA, the U.S. Government or any of its agencies or officers has approved any ownership interests you have issued or obligations you have incurred. Be certain to include a statement to this effect in any solicitation to investors. Example: You may not represent or imply that ''SBA stands behind the NMVC Company'' or that ''Your capital is safe because SBA's experts review proposed investments to make sure they are safe for the NMVC Company.''

§ 108.503 NMVC Company's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division.

(b) *SBA approval of valuation policy.* You must have a written valuation policy approved by SBA for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain SBA's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors, managing members, or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to SBA. If SBA reasonably believes that your valuations, individually or in the

aggregate, are materially misstated, it reserves the right to require you to engage, at your expense, an independent third party acceptable to SBA to substantiate the valuations.

(d) *Frequency of valuations.*

(1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and at the end of your fiscal year.

(2) On a case-by-case basis, SBA may require you to perform valuations more frequently.

(3) You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.

(e) *Review of valuations by independent public accountant.*

(1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

§ 108.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with a modem, and be able to use this equipment to prepare reports (using SBA provided software) and transmit them to SBA. In addition, you must have access to the Internet and the capability to send and receive electronic mail via the Internet.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

§ 108.506 Safeguarding the NMVC Company's assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

§ 108.507 Violations based on false filings and nonperformance of agreements with SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Nonperformance of any of the requirements of any Debenture or of any written agreement with SBA.

(b) *False statement.* In any document submitted to SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact. A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 108.509 Employment of SBA officials.

Without SBA's prior written approval, for a period of two years after the date of your most recent issuance of Leverage (or the receipt of any SBA Assistance as defined in part 105 of this chapter), you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(a) Served as an officer, attorney, agent, or employee of SBA on or within one year before such date; and

(b) As such, occupied a position or engaged in activities which, in SBA's determination, involved discretion with respect to the granting of SBA Assistance.

Management and Compensation

§ 108.510 SBA approval of NMVC Company's Investment Adviser/Manager.

You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing members, or general partner. If you have Leverage or plan to seek Leverage, you must obtain SBA's prior written approval of the management contract. SBA's approval of an Investment Adviser/Manager for one NMVC Company does not indicate approval of that manager for any other NMVC Company.

(a) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to the Small Businesses in your Portfolio, and

(2) Indicate the basis for computing Management Expenses.

(b) *Material change to approved management contract.* If there is a material change, both you and SBA must approve such change in advance. If you are uncertain if the change is material, submit the proposed revision to SBA.

§ 108.520 Management Expenses of a NMVC Company.

SBA must approve any increases in your Management Expenses.

(a) *Definition of Management Expenses.* Management Expenses include:

(1) Salaries;

(2) Office expenses;

(3) Travel;

(4) Business development;

(5) Office and equipment rental;

(6) Bookkeeping; and

(7) Expenses related to developing, investigating and monitoring investments.

(b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.

Cash Management by a NMVC Company

§ 108.530 Restrictions on investments of idle funds by NMVC Companies.

(a) *Permitted investments of idle funds.* Funds not invested in Small Businesses must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment, or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount.*

(1) You are permitted to deposit funds in a federally insured institution in excess of the institution's insured amount, but only if the institution is ''well capitalized'' in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation, as amended (12 CFR 325.103).

(2) Exception: You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase

agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 108.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

Borrowing by NMVC Companies From Non–SBA Sources

§ 108.550 Prior approval of secured third-party debt of NMVC companies.

(a) *Definition.* In this § 108.550, ''secured third-party debt'' means any non-SBA debt secured by any of your assets, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get SBA's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual Form 468) are comparable.

(c) *Conditions for SBA approval.* As a condition of granting its approval under this § 108.550, SBA may impose such restrictions or limitations as it deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). SBA will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless SBA notifies you otherwise within 30 days after it receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;

(3) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

Voluntary Decrease in Regulatory Capital

§ 108.585 Voluntary decrease in NMVC Company's Regulatory Capital.

You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 108.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 355(d) of the Act.

Subpart H—Recordkeeping, Reporting, and Examination Requirements for NMVC Companies

Recordkeeping Requirements for NMVC Companies

§ 108.600 General requirement for NMVC Company to maintain and preserve records.

(a) *Maintaining your accounting records.* You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless SBA approves otherwise.

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction.

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or non-SBA lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker's per-account insurance coverage.

(c) *Preservation of records.* You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c), and must remain accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership NMVC Company or LLC NMVC Company, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses.

(ii) Your Articles, bylaws, minute books, and NMVC Company application.

(iii) All documents evidencing ownership of the NMVC Company including ownership ledgers, and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(l) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments.

(ii) All loan, participation, and escrow agreements.

(iii) Size status declarations (SBA Form 480).

(iv) Any capital stock certificates and warrants of the Portfolio Concern that you did not surrender or exercise.

(v) All other documents and supporting material relating to the Portfolio Concern, including correspondence.

(4) You may substitute a microfilm or computer-scanned or generated copy for the original of any record covered by this paragraph (c).

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in Circular A–110 of the Office of Management and Budget.

§ 108.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to SBA upon request.

(a) SBA Form 480, the Size Status Declaration, executed both by you and by the concern you are financing. By executing this document, both parties certify that the concern is a Small Business. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business.

(b) SBA Form 652, a certification by the concern you are financing that it will not illegally discriminate (see part 112 of this chapter).

(c) A certification by the concern you are financing of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

(d) For each Low-Income Investment, a certification by the concern you are financing as to the basis for its qualification as a Low-Income Enterprise.

§ 108.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 108.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the applicant to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses, projections, and such community economic development information about the company, as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the business and the amount of the proposed Financing.

(b) *Updated financial and community economic development information.*

(1) The terms of each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial and community economic development information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern;

(iii) Verify the use of Financing proceeds; and

(iv) Evaluate the community economic development impact of the Financing.

(2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the business involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (see § 108.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by SBA's examiners for the purpose of verifying the certifications made by a Portfolio Concern under § 108.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or SBA's examiners access to its books and records for such purpose.

Reporting Requirements For NMVC Companies

§ 108.630 Requirement for NMVC companies to file financial statements and supplementary information with SBA (SBA Form 468).

(a) *Annual filing of Form 468.* For each fiscal year, you must submit to SBA financial statements and supplementary information prepared on SBA Form 468. You must file Form 468 on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of Form 468.* An independent public accountant acceptable to SBA must audit the annual Form 468.

(2) *Insurance requirement for public accountant.* Unless SBA approves otherwise, your independent public accountant must carry at least $1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least $1,000,000.

(b) *Interim filings of Form 468.* When requested by SBA, you must file interim reports on Form 468. SBA may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under an SBA Leverage commitment, you must also comply with any applicable filing requirements set forth in § 108.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's Accounting Standards and Financial Reporting Requirements for Small Business Investment Companies.

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Office of New Markets Venture Capital in the Investment Division of SBA.

(e) *Reporting of social, economic, or community development impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the social, economic, or community development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in LI Areas.

(f) *Reporting of community development information.* For each Financing of a Low-Income Enterprise, your Form 468 must include an assessment of such Financing with respect to:

(1) The social, economic or community development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement;

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the NMVC program; and

(4) Whether, and if so, how you achieved accountability to the residents of the LI Area in connection with that Financing.

§ 108.640 Requirement to file portfolio financing reports (SBA Form 1031).

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

§ 108.650 Requirement to report portfolio valuations to SBA.

You must determine the value of your Loans and Investments in accordance with § 108.503. You must report such valuations to SBA within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within thirty days following the close of the quarter.

§ 108.660 Other items required to be filed by NMVC Company with SBA.

(a) *Reports to owners.* You must give SBA a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give SBA a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give SBA a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser or other Associate of yours for alleged breach of official duty.

(2) SBA may require you to submit copies of the pleadings and other documents SBA may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise SBA of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, or general partner of the NMVC Company, or any other person who was required by SBA to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to SBA within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in Circular A–110 of the Office of Management and Budget and any grant award document executed between you and SBA.

(f) *Other reports.* You must file any other reports SBA may require in writing.

§ 108.680 Reporting changes in NMVC Company not subject to prior SBA approval.

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require SBA's prior approval. You must report such changes to SBA within 30 days for post approval.

(b) *Approval by SBA.* You may consider any change submitted under this section § 108.680 to be approved unless SBA notifies you to the contrary within 90 days after receiving it. SBA's approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions SBA may prescribe.

Examinations of NMVC Companies by SBA for Regulatory Compliance

§ 108.690 Examinations.

All NMVC companies must submit to annual examinations by or at the direction of SBA for the purpose of evaluating regulatory compliance.

§ 108.691 Responsibilities of NMVC Company during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 108.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to SBA upon request.

§ 108.692 Examination fees.

(a) *General.* SBA will assess fees for examinations in accordance with this § 108.692. Unless SBA determines otherwise on a case by case basis, SBA will not assess fees for special examinations to obtain specific information.

(b) *Base fee.* A base fee of $3,500 will be assessed, subject to adjustment in accordance with paragraph (c) of this section.

(c) *Adjustments to base fee.* The base fee will be decreased based on the following criteria:

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination and SBA did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee; and

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by the examiner for on-site review), you will receive a 10% discount on your base fee.

(d) *Delay fee.* If, in the judgment of SBA, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, SBA may assess an additional fee of up to $500 per day.

Subpart I—Financing of Small Businesses by NMVC Companies

Determining the Eligibility of a Small Business for NMVC Financing

§ 108.700 Compliance with size standards in part 121 of this chapter as a condition of Assistance.

You are permitted to provide financial assistance and management services only to a Small Business. To determine whether an applicant meets the size standards for a Small Business, you may use either the financial size standards in § 121.301(c)(1) of this chapter or the industry standard covering the industry in which the applicant is primarily engaged, as set forth in § 121.301(c)(2) of this chapter.

§ 108.710 Requirement to finance Low-Income Enterprises.

(a) *Low-Income Enterprise Financings.* At the close of each of your fiscal years, at least 80 percent of your Portfolio Concerns must be Low-Income Enterprises in which you have an Equity Capital Investment.

(b) *Non-compliance with this section.* If you have not reached the percentage required in paragraph (a) of this section at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year. However, you will not be eligible for additional Leverage until such time as you reach the required percentage (see § 108.1120).

§ 108.720 Small Businesses that may be ineligible for financing.

(a) *Relenders or reinvestors.* You are not permitted to finance any business that is a relender or reinvestor. Relenders or reinvestors are businesses whose primary business activity involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Passive Businesses.* You are not permitted to finance a passive business.

(1) *Definition.* A business is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the company does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* You may finance a passive business if it is a Small Business and it passes substantially all the proceeds through to one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b) (2), ''subsidiary company'' means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive business.

(3) *Exception for certain Partnership NMVC companies.* With the prior written approval of SBA, if you are a Partnership NMVC Company, you may form one or more wholly owned corporations in accordance with this paragraph (b) (3). The sole purpose of

such corporation(s) must be to provide Financing to one or more eligible, unincorporated Small Businesses. You may form such corporation(s) only if a direct Financing to such Small Businesses would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of § 108.730(a).

(c) *Real Estate Businesses.*

(1) You are not permitted to finance:

(i) Any business classified under sector 233 (Building, Developing, and Contracting) of the NAICS Manual, or

(ii) Any business listed under sector 531 (Real Estate) unless at least 80 percent of the revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance a business, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Small Business:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business purpose; or

(ii) Is building or renovating a building and will use at least 67 percent of the usable square footage for an eligible business purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business purpose.

(d) *Project Financing.* You are not permitted to finance a business if:

(1) The assets of the business are to be reduced or consumed, generally without replacement, as the life of the business progresses, and the nature of the business requires that a stream of cash payments be made to the business's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects and oil and gas wells; or

(2) The primary purpose of the Financing is to fund production of a single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Small Business. Examples include motion pictures and electric generating plants.

(e) *Farm land purchases.* You are not permitted to finance the acquisition of farmland. Farmland means land, which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) *Public interest.* You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) *Foreign investment.*—(1) *General rule.* You are not permitted to finance a business if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 49 percent of the employees or tangible assets of the Small Business are located outside the United States (unless you can show, to SBA's satisfaction, that the Financing was used for a specific domestic purpose).

(2) *Exception.* This paragraph (g) does not prohibit a Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States.

(h) *Financing NMVC companies.* You are not permitted to provide funds, directly or indirectly, that the Small Business will use:

(1) To purchase stock in or provide capital to a NMVC Company; or

(2) To repay an indebtedness incurred for the purpose of investing in a NMVC Company.

§ 108.730 Financings which constitute conflicts of interest.

(a) *General rule.* You must not self-deal to the prejudice of a Small Business, the NMVC Company, its shareholders or partners, or SBA. Unless you obtain a prior written exemption from SBA for special instances in which a Financing may further the purposes of the Act despite presenting a conflict of interest, you must not directly or indirectly:

(1) Provide Financing to any of your Associates, except for a Small Business that satisfies all of the following conditions:

(i) Your Associate relationship with the Small Business is described by paragraph (8) or (9) of the definition of Associate in § 108.50,

(ii) No Person triggering the Associate relationship identified in paragraph (a)(1)(i) of this section is a Close Relative or Secondary Relative of any Person described in paragraphs (1), (2), (4), or (5) of the definition of Associate in § 108.50, and

(iii) No single Associate of yours has either a voting interest or an economic interest in the Small Business exceeding 20 percent, and no two or more of your Associates have either a voting interest or an economic interest exceeding 33 percent. Economic interests shall be computed on a fully diluted basis, and both voting and economic interests shall exclude any interest owned through the NMVC Company.

(2) Provide Financing to an Associate of another NMVC Company if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that NMVC Company or a third NMVC Company (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) A Small Business Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such business; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to a Small Business to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(b) *Rules applicable to Associates.* Without SBA's prior written approval, your Associates must not, directly or indirectly:

(1) Borrow money from any Person described in paragraph (a)(3) of this section.

(2) Receive from a Small Business any compensation in connection with Assistance you provide (except as permitted under § 108.825(c)), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) *Applicability of other laws.* You are also bound by any restrictions in Federal or State laws governing conflicts of interest and fiduciary obligations.

(d) *Financings with Associates—(1) Financings with Associates requiring prior approval.* Without SBA's prior written approval, you may not Finance any business in which your Associate has either a voting equity interest or total equity interests (including potential interests) of at least five percent, except as otherwise permitted under paragraph (a)(1) of this section.

(2) *Other Financings with Associates.* If you and an Associate provide Financing to the same Small Business, either at the same time or at different times, you must be able to demonstrate to SBA's satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party's financing transactions.

(3) *Exceptions to paragraphs (d)(l) and (d)(2) of this section.* A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Small Business, and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Small Business on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are NMVC companies.

(e) *Use of Associates to manage Portfolio Concerns.* To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Small Business. You must identify any such Associate in your records available for SBA's review under § 108.600. Without SBA's prior written approval, the Associate must not:

(1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, the percentages of the Portfolio Concern's equity set forth in paragraph (a)(1) of this section.

(2) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this § 108.730, you need not obtain SBA's approval of the transaction. However, you must promptly notify SBA of the transaction.

(g) *Restriction on options obtained by NMVC Company's management and employees.* Your employees, officers, directors, managing members or general partners, or the general partners of the management company that is providing services to you or to your general partner, may obtain options in a Financed Small Business only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) SBA gives its prior written approval; or

(3) The options received are compensation for service as a member of the board of directors of the Small Business, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

§ 108.740 Portfolio diversification (''overline'' limitation).

(a) Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed 20 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its current cost plus any amount of the Financing that was previously written off.

§ 108.760 How a change in size or activity of a Portfolio Concern affects the NMVC Company and the Portfolio Concern.

(a) *Effect on NMVC Company of a change in size of a Portfolio Concern.* If a Portfolio Concern no longer qualifies as a Small Business you may keep your investment in the concern and:

(1) Subject to the overline limitations of § 108.740, you may provide additional Financing to the concern up to the time it makes a public offering of its securities.

(2) Even after the concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering, or fund Commitments you made before the public offering.

(b) *Effect of a change in business activity occurring within one year of NMVC Company's initial Financing.*

(1) *Retention of Investment.* Unless you receive SBA's written approval, you may not keep your investment in a Portfolio Concern, small or otherwise, which becomes ineligible by reason of a change in its business activity within one year of your initial investment.

(2) *Request for SBA's approval to retain investment.* If you request that SBA approve the retention of your investment, your request must include sufficient evidence to demonstrate that the change in business activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing.* If SBA approves your request to retain an investment under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 108.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment: and

(2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 108.740.

Structuring NMVC Company's Financing of Eligible Small Businesses

§ 108.800 Financings in the form of equity interests.

You may not, inadvertently or otherwise:

(a) Become a general partner in any unincorporated business; or

(b) Become jointly or severally liable for any obligations of an unincorporated business.

§ 108.820 Financings in the form of guarantees.

(a) *General rule.* At the request of a Small Business or where necessary to protect your existing investment, you may guarantee the monetary obligation of a Small Business to any non-Associate creditor.

(b) *Exception.* You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business; or

(2) The amount of the guaranty plus any direct Financings to the Small Business exceed the overline limitations of § 108.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) *Pledge of NMVC Company's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§ 108.825 Purchasing securities from an underwriter or other third party.

(a) *Securities purchased through or from an underwriter.* You may purchase

the securities of a Small Business through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the Small Business, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* You must keep records available for SBA's inspection which show the relevant details of the transaction, including, but not limited to, date, price, commissions, and the underwriter's certifications required under paragraph (c) of this section.

(c) *Underwriter's requirements.* The underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase.

(d) *Securities purchased from another NMVC Company or from SBA.* You may purchase from, or exchange with, another NMVC Company, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio securities (or any interest therein) on a recourse basis, you shall include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of a Small Business from a non-issuer not previously described in this § 108.825 if such acquisition is a reasonably necessary part of the overall sound Financing of the Small Business.

Limitations on Disposition of Assets

§ 108.885 Disposition of assets to NMVC Company's Associates.

Except with SBA's prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

Subpart J—SBA Financial Assistance for NMVC Companies (Leverage)

General Information About Obtaining Leverage

§ 108.1100 Type of Leverage and application procedures.

(a) *Type of Leverage available.* You may apply for Leverage from SBA in the form of a guarantee of your Debentures.

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for SBA's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. See §§ 108.1200 through 108.1240.

(c) *Where to send your application.* Send all Leverage applications to SBA, Investment Division Office of New Markets Venture Capital, 409 Third Street, S.W., Washington, DC 20416.

§ 108.1120 General eligibility requirement for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

§ 108.1130 Leverage fees payable by NMVC Company.

There is no fee for the issuance of Debentures by a NMVC Company.

§ 108.1140 NMVC Company's acceptance of SBA remedies under § 108.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 108.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

Maximum Amount of Leverage for Which a NMVC Company is Eligible

§ 108.1150 Maximum amount of Leverage for a NMVC Company.

The face amount of a NMVC Company's outstanding Debentures may not exceed 150 percent of its Leverageable Capital.

Conditional Commitments by SBA to Reserve Leverage for a NMVC Company

§ 108.1200 SBA's Leverage commitment to a NMVC Company—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 108.1200 through 108.1240, you may apply for SBA's conditional commitment to reserve a specific amount and type of Leverage for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* SBA will notify you when it is accepting requests for Leverage commitments. Upon receipt of your request, SBA will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000. SBA, in its discretion, may determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

(d) *Term of Leverage commitment.* SBA's Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by SBA.

§ 108.1220 Requirement for NMVC Company to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against SBA's Leverage commitment more than 90 days since your submission of an annual Form 468 or a Form 468 (Short Form), you must:

(1) Give SBA a financial statement on Form 468 (Short Form), and

(2) File a statement of no material adverse change in your financial condition since your last filing of Form 468.

(b) You will not be eligible for a draw if you are not in compliance with this § 108.1220.

§ 108.1230 Draw-downs by NMVC Company under SBA's Leverage commitment.

(a) *NMVC Company's authorization of SBA to guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you authorize SBA, or any agent or trustee SBA designates, to guarantee your Debenture and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. SBA, in its discretion, may determine a minimum dollar amount for draws against SBA's Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

(c) *Effect of regulatory violations on NMVC Company's eligibility for draws.*

(1) *General rule.* You are eligible to make a draw against SBA's Leverage commitment only if you are in compliance with all applicable provisions of the Act and SBA regulations (i.e., no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) SBA determines that your outstanding violations are of non-substantive provisions of the Act or regulations or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with SBA on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (see also § 108.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 (Long Form) in accordance with § 108.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and SBA regulations (i.e., no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the NMVC Company;

(ii) An officer of a corporate general partner of the NMVC Company; or

(iii) An individual who is authorized to act as or for a general partner of the NMVC Company.

(4) A statement that the proceeds are needed to fund one or more particular Small Businesses or to provide liquidity for your operations. If required by SBA, the statement must include the name and address of each Small Business, and the amount and anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.*

(1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 confirming the closing of the transaction.

(2) If SBA required you to provide information concerning a specific planned Financing under paragraph (d)(3) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must give SBA a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. SBA may also determine that you are not in compliance with the terms of your Leverage under §§ 108.1810.

§ 108.1240 Funding of NMVC Company's draw request through sale to third-party.

(a) *NMVC Company's authorization of SBA to arrange sale of securities to third-party.* By submitting a request for a draw of Debenture Leverage, you authorize SBA, or any agent or trustee SBA designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture to a third-party at a rate approved by SBA; and

(2) The purchase of your security from the third-party and the pooling of your security with other securities with the same maturity date.

(b) *Sale of Debentures to a third-party.* If SBA arranges for the sale of your Debenture to a third-party, the sale price may be an amount discounted from the face amount of the Debenture.

Funding Leverage by Use of SBA Guaranteed Trust Certificates (''TCs'')

§ 108.1600 SBA authority to issue and guarantee Trust Certificates.

(a) *Authorization.* Section 356 of the Act authorizes SBA to issue TCs and to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of such TC is limited to the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(b) *SBA authority to arrange public or private fundings of Leverage.* SBA in its discretion may arrange for public or private financing under its guarantee authority. Such financing arranged by SBA may be accomplished by the sale of individual Debentures, aggregations of Debentures, or Pools or Trusts of Debentures.

(c) *Pass-through provisions.* TCs shall provide for a pass-through to their holders of all amounts of principal and interest paid on the Debentures in the Pool or Trust against which they are issued.

(d) *Formation of a Pool or Trust holding Leverage Securities.* SBA shall approve the formation of each Pool or Trust. SBA may, in its discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust it deems appropriate.

§ 108.1610 Effect of prepayment or early redemption of Leverage on a Trust Certificate.

(a) The rights, if any, of a NMVC Company to prepay any Debenture is established by the terms of such security, and no such right is created or denied by the regulations in this part.

(b) SBA's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture.

(c) Any prepayment of a Debenture pursuant to the terms of the Guaranty Agreement relating to such security shall reduce the SBA guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal that such prepaid Debenture represents in the Trust or Pool backing such TC.

(d) SBA shall be discharged from its guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment. whether or not such successor or transferee shall have notice of any such prepayment.

(e) Interest on prepaid Debentures shall accrue only through the date of prepayment.

(f) In the event that all Debentures constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; provided, however, that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the CRA shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor NMVC Company pursuant to the terms of the Debenture.

§ 108.1620 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.

(a) *Agents.* SBA may appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture, SBA may cause each NMVC Company to appoint a Selling Agent to perform functions that include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (''Poolers'').

(ii) Receiving guaranteed Debentures as well as negotiating the terms and conditions of sales or periodic offerings of Debentures and/ or TCs on behalf of NMVC companies.

(iii) Directing and coordinating periodic sales of Debentures and/or TCs.

(iv) Arranging for the production of Offering Circulars, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* SBA shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as SBA, from time to time, may prescribe.

(3) *Central Registration Agent.* Pursuant to a contract entered into with SBA, the CRA, as SBA's agent, will do the following with respect to the Pools or Trust Certificates for the Debentures:

(i) Form an SBA-approved Pool or Trust

(ii) Issue the TCs in the form prescribed by SBA;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from NMVC companies;

(v) Make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures;

(vi) Hold, safeguard, and release all Debentures constituting Trusts or Pools upon instructions from SBA;

(vii) Remain custodian of such other documentation as SBA shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures, all Pools and Trusts, and all TCs;

(ix) Perform such other functions as SBA may deem necessary to implement the provisions of this section.

(b) *Functions.* Either SBA or an agent appointed by SBA may perform the function of locating purchasers, and negotiating and closing the sale of Debentures and TCs. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

§ 108.1630 SBA regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.

(a) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by SBA pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They also shall be in good standing with SBA as determined by the SBA Associate Administrator for Investment (see paragraph (c) of this section) and shall provide a fidelity bond or insurance in such amount as SBA may require.

(b) *Suspension and/or termination of Broker or Dealer.* SBA shall exclude from the sale and all other dealings in Debentures or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, SBA will suspend such broker or dealer for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) If such broker or dealer has suffered an adverse final civil judgment holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.

(c) *Termination/suspension proceedings.* A broker's or dealer's participation in the market for Debentures or TCs will be conducted in accordance with part 134 of this chapter. SBA may, for any of the reasons stated in paragraphs (b) (1) through (b)(3) of this section, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to part 134 of this chapter.

§ 108.1640 SBA access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures and TCs available to SBA for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

Miscellaneous

§ 108.1700 Transfer by SBA of its interest in a NMVC Company's Leverage security.

Upon such conditions and for such consideration as it deems reasonable, SBA may sell, assign, transfer, or otherwise dispose of any Debenture held by or on behalf of SBA. Upon notice by SBA, a NMVC Company will make all payments of principal and interest as shall be directed by SBA. A NMVC Company will be liable for all damage or loss which SBA may sustain by reason of such disposal, up to the amount of the NMVC Company's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

§ 108.1710 SBA authority to collect or compromise its claims.

SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to obligations held or guaranteed by SBA, and all legal or equitable rights accruing to SBA.

§ 108.1720 Characteristics of SBA's guarantee.

If SBA agrees to guarantee a NMVC Company's Debentures, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or any other circumstances that might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, SBA will make timely payments of principal and interest on the Debentures.

Subpart K—NMVC Company's Noncompliance With Terms of Leverage

§ 108.1810 Events of default and SBA's remedies for NMVC Company's noncompliance with terms of Debentures.

(a) *Applicability of this section.* By issuing Debentures, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance and as if fully set forth in the Debentures.

(b) *Automatic events of default.* The occurrence of one or more of the events in this paragraph (b) causes the remedies in paragraph (c) of this section to take effect immediately.

(1) *Insolvency.* You become equitably or legally insolvent.

(2) *Voluntary assignment.* You make a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(3) *Bankruptcy.* You file a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against you and is not dismissed within 60 days.

(c) *SBA remedies for automatic events of default.* Upon the occurrence of one or more of the events in paragraph (b) of this section:

(1) Without notice, presentation or demand, the entire indebtedness evidenced by your Debentures, including accrued interest, and any other amounts owed SBA with respect to your Debentures, is immediately due and payable; and

(2) You automatically consent to the appointment of SBA or its designee as your receiver under section 363(c) of the Act.

(d) *Events of default with notice.* For any occurrence (as determined by SBA) of one or more of the events in this paragraph (d), SBA may avail itself of one or more of the remedies in paragraph (e) of this section.

(1) *Fraud.* You commit a fraudulent act that causes detriment to SBA's position as a creditor or guarantor.

(2) *Fraudulent transfers.* You make any transfer or incur any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(3) *Willful conflicts of interest.* You willfully violate § 108.730.

(4) *Willful non-compliance.* You willfully violate one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act or any substantive provision of your Participation Agreement.

(5) *Repeated Events of Default.* At any time after being notified by SBA of the occurrence of an event of default under paragraph (f) of this section, you engage in similar behavior that results in another occurrence of the same event of default.

(6) *Transfer of Control.* You willfully violate § 108.410, and as a result of such violation you undergo a transfer of Control.

(7) *Non-cooperation under § 108.1810(h).* You fail to take appropriate steps, satisfactory to SBA, to accomplish any action SBA may have required under paragraph (h) of this section.

(8) *Non-notification of Events of Default.* You fail to notify SBA as soon as you know or reasonably should have known that any event of default exists under this section.

(9) *Non-notification of defaults to others.* You fail to notify SBA in writing within ten days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness of yours, issued to or held by anyone other than SBA.

(e) *SBA remedies for events of default with notice.* Upon written notice to you of the occurrence (as determined by SBA) of one or more of the events in paragraph (d) of this section:

(1) SBA may declare the entire indebtedness evidenced by your Debentures, including accrued interest and/or any other amounts owed SBA with respect to your Debentures, immediately due and payable: and

(2) SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as your receiver under section 363 (c) of the Act.

(f) *Events of default with opportunity to cure.* For any occurrence (as determined by SBA) of one or more of the events in this paragraph (f), SBA may avail itself of one or more of the remedies in paragraph (g) of this section.

(1) *Excessive Management Expenses.* Without the prior written consent of SBA, you incur Management Expenses in excess of those permitted under §§ 108.510 and 108.520.

(2) *Improper Distributions.* You make any Distribution to your shareholders or partners, except with the prior written consent of SBA, other than:

(i) Distributions permitted under § 108.585; and

(ii) Payments from Retained Earnings Available for Distribution based on either the shareholders' pro-rata interests or the provisions for profit distributions in your partnership agreement, as appropriate.

(3) *Failure to make payment.* Unless otherwise approved by SBA, you fail to make timely payment of any amount due under any security or obligation of yours that is issued to, held or guaranteed by SBA.

(4) *Failure to maintain Regulatory Capital.* You fail to maintain the minimum Regulatory Capital required under these regulations or, without the prior written consent of SBA, you reduce your Regulatory Capital except as permitted by § 108.585.

(5) *Capital Impairment.* You have a condition of Capital Impairment as determined under § 108.1830.

(6) *Cross-default.* An obligation of yours that is greater than $100,000 becomes due or payable (with or without notice) before its stated maturity date, for any reason including your failure to pay any amount when due. This provision does not apply if you pay the amount due within any applicable grace period or contest the payment of the obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* You violate or fail to perform one or more of the terms and conditions of any security or obligation of yours that is issued to, held or guaranteed by SBA, or of any agreement (including your Participation Agreement) with or conditions imposed by SBA in its administration of the Act and the regulations promulgated under the Act.

(8) *Noncompliance.* Except as otherwise provided in paragraph (d)(5) of this section, SBA determines that you have violated one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act.

(9) *Failure to maintain diversity.* You fail to maintain diversity between management and ownership as required by § 108.150.

(g) *SBA remedies for events of default with opportunity to cure.*

(1) Upon written notice to you of the occurrence (as determined by SBA) of one or more of the events of default in paragraph (f) of this section, and subject to the conditions in paragraph (g)(2) of this section:

(i) SBA may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed SBA with respect to your Debentures, immediately due and payable; and

(ii) SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as your receiver under section 363(c) of the Act.

(2) SBA may invoke the remedies in paragraph (g)(1) of this section only if:

(i) It has given you at least 15 days to cure the default(s); and

(ii) You fail to cure the default(s) to SBA's satisfaction within the allotted time.

(h) *Repeated non-substantive violations.* If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated under the Act, SBA, after written notification to you and until you cure such condition to SBA's satisfaction, may deny you additional Leverage and/or require you to take such actions as SBA may determine to be appropriate under the circumstances.

(i) *Consent to removal of officers, directors, or general partners and/or appointment of receiver.* The Articles of each NMVC Company must include the following provisions as a condition to

the purchase or guarantee by SBA of Leverage. Upon the occurrence of any of the events specified in paragraphs (d)(1) through (d)(6) or (f)(1) through (f)(3) of this section as determined by SBA, SBA shall have the right, and you consent to SBA's exercise of such right:

(1) With respect to a Corporate NMVC Company, upon written notice, to require you to replace, with individuals approved by SBA, one or more of your officers and/or such number of directors of your board of directors as is sufficient to constitute a majority of such board; or

(2) With respect to a Partnership NMVC Company or an LLC NMVC Company, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove the general partner or manager of the NMVC Company, which general partner or manager shall then be replaced in accordance with NMVC Company's Articles by a new general partner or manager approved by SBA; and/or

(3) With respect to a Corporate or Partnership or LLC NMVC Company, to obtain the appointment of SBA or its designee as your receiver under section 363(c) of the Act for the purpose of continuing your operations. The appointment of a receiver to liquidate a NMVC Company is not within such consent, but is governed instead by the relevant provisions of the Act.

Computation of NMVC Company's Capital Impairment

§ 108.1830 NMVC Company's Capital Impairment definition and general requirements.

(a) *Significance of Capital Impairment condition.* If you have a condition of Capital Impairment, you are not in compliance with the terms of your Leverage. As a result, SBA has the right to impose the applicable remedies for noncompliance in § 108.1810(g).

(b) *Definition of Capital Impairment condition.* You have a condition of Capital Impairment if your Capital Impairment Percentage, as computed in § 108.1840, exceeds 70 percent.

(c) *Quarterly computation requirement and procedure.* You must determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. You must notify SBA promptly if you are capitally impaired.

(d) *SBA's right to determine NMVC Company's Capital Impairment condition.* SBA may make its own determination of your Capital Impairment condition at any time.

§ 108.1840 Computation of NMVC Company's Capital Impairment Percentage.

(a) *General.* This section contains the procedures you must use to determine your Capital Impairment Percentage. You must compare your Capital Impairment Percentage to the maximum permitted under § 108.1830(b) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and you do not have to perform any more procedures in this § 108.1840. Otherwise, you must continue with paragraph (c) of this section. You satisfy the test if the following amounts are both zero or greater:

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468, and Includible Non-Cash Gains.

(2) Unrealized Gain (Loss) on Securities Held.

(c) *How to compute your Capital Impairment Percentage.*

(1) If you have an Unrealized Gain on Securities Held, compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, continue with paragraph (c)(2) of this section.

(2) Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.

(3) If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.

(4) If the sum in paragraph (c)(2) of this section is less than zero, drop the negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) *How to compute your Adjusted Unrealized Gain.*

(1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your ''Net Appreciation''.

(2) Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your ''Class I Appreciation''.

(3) Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and meet the following criteria, which must be substantiated to the satisfaction of SBA (this is your ''Class 2 Appreciation''):

(i) The Small Business that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;

(ii) Such financing represents a substantial investment in the form of an arm's length transaction by a sophisticated new investor in the issuer's securities; and

(iii) Such financing occurred within 24 months of the date of the Capital Impairment computation, or the Small Business' pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of the Small Business' average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the table in § 107.1840(d)(4).

(5) Reduce the gain computed in paragraph (d) (4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

Subpart L—Ending Operations as a NMVC Company

§ 108.1900 Termination of participation as a NMVC Company.

You may not terminate your participation as a NMVC Company without SBA's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding Leverage (including any prepayment penalties thereon), or by a plan satisfactory to SBA for the orderly liquidation of the NMVC Company.

Subpart M—Miscellaneous

§ 108.1910 Non-waiver of SBA's rights or terms of Leverage security.

SBA's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. SBA's failure to require you to perform any term or provision of your Leverage does not affect SBA's right to enforce such term or provision. Similarly, SBA's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in § 108.1810 does not constitute

a waiver of any succeeding breach of such term or provision or condition.

§ 108.1920 NMVC Company's application for exemption from a regulation in this part 108.

(a) *General.* You may file an application in writing with SBA to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. SBA may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act.

(b) *Contents of application.* Your application must be accompanied by supporting evidence that demonstrates to SBA's satisfaction that:

(1) The proposed action is fair and equitable; and

(2) The exemption requested is reasonably calculated to advance the best interests of the NMVC program in a manner consistent with the policy objectives of the Act and the regulations in this part.

§ 108.1930 Effect of changes in this part 108 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

§ 108.1940 Procedures for designation of additional Low-Income Geographic Areas.

(a) *General.* On its own initiative or upon written request by a Person which addresses the relevant factor(s) set forth in paragraph (b) of this section, SBA may consider whether to designate additional census tracts (or equivalent county divisions) as LI Areas.

(b) *Criteria.* SBA will consider one or more of the following factors in determining whether to designate a particular census tract (or equivalent county division) as an additional LI Area:

(1) A substantial number of Low-Income Individuals reside in that census tract (or equivalent county division).

(2) As adequately supported by studies or other analyses or reliable data, that census tract (or equivalent county division) has a pattern of unmet needs for investment capital.

(3) As adequately supported by studies or other analyses or reliable data, that census tract (or equivalent county division) has indications of economic distress.

(c) *Procedure for designation.* (1) If SBA decides to consider the designation of an additional LI Area, SBA will publish in the **Federal Register** a notice that it is considering such designation. SBA will advise the public that it will consider any comments supporting or opposing the designation, submitted within a specified time period.

(2) In making a final decision on whether to designate a particular census tract (or equivalent county division) as an additional LI Area, SBA will consider evidence submitted by any requester, SBA's own research, any public comments submitted, and any other information deemed relevant by SBA.

(3) If SBA designates a particular census tract (or equivalent county division) as an additional LI Area, SBA will publish a notice in the **Federal Register** and, if appropriate, will amend this part 108 to include the additional LI Area.

Subpart O—Requirements and Procedures for Operational Assistance Grants to NMVC Companies and SSBICs

§ 108.2000 Operational Assistance Grants to NMVC Companies and SSBICs.

(a) *NMVC Companies.* Regulations governing Operational Assistance grants to NMVC Companies may be found in subparts D and E of this part 108.

(b) *SSBICs.*—(1) *Notice of Funds Availability (''NOFA'').* SBA will publish a NOFA in the **Federal Register**, advising SSBICs of the availability of funds for Operational Assistance grants to SSBICs. This NOFA will be the same as the NOFA described in § 108.300(a), or will be published simultaneously with that NOFA. An SSBIC may submit an application for an Operational Assistance grant only during the time period specified for such purpose in the NOFA.

(2) *Eligibility.* An SSBIC is eligible to apply for an Operational Assistance grant if:

(i) It intends to increase its Regulatory Capital, as in effect on December 21, 2000, and to make Low-Income Investments in the amount of such increase;

(ii) It intends to raise binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, in an amount not less than 30 percent of the intended increase in its Regulatory Capital described in paragraph (b)(2)(i) of this section; and

(iii) It has a plan describing how it intends to use the requested grant funds to provide Operational Assistance to Smaller Enterprises in which it has made or expects to make Developmental Venture Capital Investments.

(3) *How to Apply.* An SSBIC must apply for an Operational Assistance grant using the application packet provided by SBA. Upon receipt of an application, SBA may request clarifying or technical information on the materials submitted as part of the application.

(4) *Contents of Application.* Each application must contain the information specified in the application packet provided by SBA, including the following information:

(i) *Amounts.* An SSBIC must specify the amount of Operational Assistance grant funds it seeks from SBA and the amount of Regulatory Capital it intends to raise after December 21, 2000.

(ii) *Plan.* An SSBIC must submit a plan addressing the following issues:

(A) The SSBIC must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it will make Developmental Venture Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and whether and to what extent it intends to provide the Operational Assistance through the use of licensed professionals, either from its own staff or from outside entities.

(B) The SSBIC must include a detailed description of how it plans to obtain binding commitments for contributions in cash or in-kind, and/or to purchase an annuity, to match the funds requested from SBA for the SSBIC's Operational Assistance grant. If it proposes to obtain commitments for cash or in-kind contributions, it also must estimate the ratio of cash to in-kind contributions (in no event may in-kind contributions exceed 50 percent of the total contributions). The SSBIC must discuss its potential sources of matching resources, the estimated timing on raising such match, and the extent of the expressions of interest to commit such match to the SSBIC.

(C) The SSBIC must describe the amount of Low-Income Investments it intends to make.

(5) *Evaluation and selection.* SBA's evaluation and selection process is intended to ensure that SSBIC requests are evaluated on a competitive basis and in a fair and consistent manner. SBA will evaluate and select SSBICs for an Operational Assistance grant award solely at SBA's discretion, by considering the following criteria:

(A) The strength of the SSBIC's application, including the strength of its proposal to provide Operational

Assistance to Smaller Enterprises in which it intends to invest;

(B) The SSBIC's regulatory compliance status; and

(C) The likelihood that and the time frame within which the SSBIC will be able to raise the Regulatory Capital it intends to raise and obtain the matching resources described in paragraph (b)(4)(B) of this section.

(6) *Grant award.* An SSBIC selected for an Operational Assistance grant award will receive a grant award only if it increases its Regulatory Capital and raises the matching resources required in § 108.2030 by a date established by SBA.

§ 108.2010 Restrictions on use of Operational Assistance grant funds.

(a) *Restrictions applicable only to SSBICs.* An SSBIC that receives an Operational Assistance grant must use both grant funds awarded by SBA and its matching resources only to provide Operational Assistance in connection with a Low-Income Investment made by the SSBIC with Regulatory Capital raised after December 21, 2000.

(b) *Restrictions applicable to NMVC Companies and SSBICs.* A NMVC Company or a SSBIC that receives an Operational Assistance grant must not use either grant funds awarded by SBA or its matching resources for ''general and administrative expense,'' as defined in the Federal Acquisition Regulations, ''Contract Cost Principles and Procedures,'' 48 CFR 31.001.

§ 108.2020 Amount of Operational Assistance grant.

(a) *Amount of grant to NMVC Company.* NMVC Companies are eligible for an Operational Assistance grant award equal to the amount of matching resources raised by the NMVC Company in accordance with §§ 108.380(a)(10)(i)(B) and 108.2030.

(b) *Amount of grant to SSBIC.* SSBICs are eligible for an Operational Assistance grant award equal to the amount of matching resources raised by the SSBIC in accordance with §§ 108.2000 and 108.2030.

(c) *Pro rata reductions.* In the event that the total amount of funds available to SBA for purposes of making Operational Assistance grant awards to NMVC Companies and SSBICs is not sufficient to award grants in the amounts described in subsections (a) and (b), SBA will make pro rata reductions in the amounts otherwise awarded to each such NMVC Company and SSBIC.

§ 108.2030 Matching requirements.

(a) *General.* All Operational Assistance grant funds SBA awards to an NMVC Company or a SSBIC must be matched on a dollar for dollar basis with funds or other resources raised by the NMVC Company or SSBIC.

(b) *Allowable sources.* (1) Any source other than SBA is an allowable source of matching resources for an Operational Assistance grant award.

(2) Neither a NMVC Company nor a SSBIC may use funds or other resources that it has used to satisfy a legal requirement for obtaining funds under any other Federal program, to satisfy the matching resources requirements described in this part 108.

(3) A portion of Private Capital may be designated as matching resources if the designated funds are used to purchase an annuity pursuant to paragraph (c)(2)(iv) of this section or are otherwise segregated in a manner acceptable to SBA.

(c) *Type and form of matching resources.* (1) Matching resources may come from cash contributions or in-kind contributions. In-kind contributions cannot exceed 50 percent of the total amount of match raised by the NMVC Company or SSBIC.

(2) Matching resources may be in the form of:

(i) Cash,

(ii) In-kind contributions,

(iii) Binding commitments for cash or in-kind contributions that may be payable over a multiyear period acceptable to SBA (but not to exceed 10 years), and/or

(iv) An annuity, purchased with funds other than Regulatory Capital, from an insurance company acceptable to SBA and that may be payable over a multiyear period acceptable to SBA (but not to exceed 10 years).

(d) *Amount of matching resources.*

(1) *NMVC Companies.* The amount of matching resources required of an NMVC Company is set forth in § 108.380(a)(1)(i)(B).

(2) *SSBICs.* The amount of matching resources required of an SSBIC is 30 percent of the increase in its Regulatory Capital since December 21, 2000, with which it has made or will make Low-Income Investments.

§ 108.2040 Reporting and recordkeeping requirements.

(a) *NMVC Companies.* Policies governing reporting, record retention, and recordkeeping requirements applicable to NMVC Companies may be found in subpart H of this part 108.

(b) *SSBICs.* An SSBIC receiving an Operational Assistance grant award must comply with all reporting, record retention and recordkeeping requirements set forth in Circular A–110 of the Office of Management and Budget and any grant award document executed between SBA and the SSBIC, as well as the reporting requirements in § 108.630(f) and the filing requirement in § 108.640.

Dated: January 12, 2001.

Aida Alvarez,

Administrator.

[FR Doc. 01–1710 Filed 1–19–01; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

New Markets Venture Capital Program; Notice of Funds Availability (NOFA) Inviting Applications for the New Markets Venture Capital Program

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The New Markets Venture Capital Program Act of 2000 (''the Act'') authorizes the U.S. Small Business Administration (''SBA'') to select participants for the New Markets Venture Capital (''NMVC'') Program and to provide financial assistance, including grant awards, under that program. The Administrator of the SBA invites applications for designation as a New Markets Venture Capital company and for grant awards available both to participants in the NMVC Program and to Specialized Small Business Investment Companies (''SSBICs''). The interim final rule (13 CFR part 108) published in today's **Federal Register** provides guidance on the contents of the necessary application materials, evaluation criteria and other program requirements. Applicants for designation as a NMVC company can find more detailed application content requirements in the NMVC company application packet, which is available on SBA's website at http://www.sba.gov/inv. SSBICs applying for a grant award can request a grant application packet from SBA at the phone number set forth below.

Subject to funding availability, SBA expects to designate 15 to 20 NMVC companies and to award up to $30 million in appropriated funds under this NOFA. SBA reserves the right to select and fund some, all, or none of the applicants for designation as a NMVC company, and the right to fund some, all, or none of the SSBIC applications for grant awards submitted in response to this NOFA.

DATES: Applications may be submitted to SBA immediately. The deadline for receipt of an application is 6:00 p.m. EST on April 19, 2001. Applications received in SBA's offices after that date and time will be rejected and returned to the sender.

ADDRESSES: Applications must be sent to Austin Belton, Director, Office of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416. Applications sent electronically or by facsimile will not be accepted.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: If you have any questions about the requirements for this program or application procedures, or wish to request an application package, contact Austin Belton, Director, Office of New Markets Venture Capital, 202–205–6510. Applications and other information regarding SBA and its programs may be downloaded from SBA's web site at http://www.sba.gov/inv.

Program Authority: Consolidated Appropriations Act of 2001, Pub. L. No. 106–554, and 13 CFR part 108.

Dated: January 12, 2001.

Aida Alvarez,

Administrator.

[FR Doc. 01–1711 Filed 1–19–01; 8:45 am]

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Federal Register

Monday,
January 22, 2001

Part XVIII

The President

Executive Order 13191—Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act

Federal Register
Vol. 66, No. 14
Monday, January 22, 2001

Presidential Documents

Title 3—

The President

Executive Order 13191 of Janaury 17, 2001

Implementation of the African Growth and Opportunity Act and the United States-Caribbean Basin Trade Partnership Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the African Growth and Opportunity Act (Title I of Public Law 106–200) (AGOA), the United States-Caribbean Basin Trade Partnership Act (Title II of Public Law 106–200) (CBTPA), the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 *et seq.*), and section 301 of title 3, United States Code, and in order to expand international trade and enhance our economic partnership with sub-Saharan Africa and the Caribbean Basin, promote investment and economic development and reduce poverty in those regions, and create new economic opportunities for American workers and businesses, it is hereby ordered as follows:

Part I—Implementation of the AGOA

Section 1. *Apparel Articles Assembled from Fabrics or Yarn Not Available in Commercial Quantities.* The Committee for the Implementation of Textile Agreements (the ''Committee'') is authorized to exercise the authority vested in the President under section 112(b)(5)(B)(i) of the AGOA (19 U.S.C. 3721(b)(5)(B)(i)) to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The Committee and the United States Trade Representative (USTR) are jointly authorized to exercise the authority vested in the President under sections 112(b)(5)(B)(ii), (iii), and (v) of the AGOA (19 U.S.C. 3721(b)(5)(B)(ii), (iii), and (v)) to obtain advice from the appropriate advisory committee, to submit a report to the appropriate Congressional committees, and to consult with those Congressional committees. The USTR is authorized to exercise the authority vested in the President under section 112(b)(5)(B)(ii) of the AGOA to obtain advice from the U.S. International Trade Commission (USITC).

Sec. 2. *Handloomed, Handmade, and Folklore Articles.* The Committee, after consultation with the Commissioner, United States Customs Service (Commissioner), is authorized to exercise the authority vested in the President under section 112(b)(6) of the AGOA (19 U.S.C. 3721(b)(6)) to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 3. *Certain Interlinings.* The Committee is authorized to exercise the authority vested in the President under section 112(d)(1)(B)(iii) of the AGOA (19 U.S.C. 3721(d)(1)(B)(iii)) to determine whether U.S. manufacturers are producing interlinings in the United States in commercial quantities. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the **Federal Register**. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 4. *Penalties for Transshipments.* The Committee, after consultation with the Commissioner, is authorized to exercise the authority vested in the President under section 113(b)(3) of the AGOA (19 U.S.C. 3722(b)(3)) to

determine, based on sufficient evidence, whether an exporter has engaged in transshipment and to deny for a period of 5 years all benefits under section 112 of the AGOA (19 U.S.C. 3721) to any such exporter, any successor of such exporter, and any other entity owned or operated by the principal of such exporter. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the **Federal Register**. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 5. *Effective Visa Systems.* Pursuant to sections 112(a) and 113(a)(1) of the AGOA (19 U.S.C. 3721(a) and 3722(a)(1)), the USTR is authorized to direct the Commissioner to take such actions as may be necessary to ensure that textile and apparel articles described in section 112(b) of the AGOA (19 U.S.C. 3721(b)) that are entered, or withdrawn from warehouse, for consumption are accompanied by an appropriate export visa, if the preferential treatment described in section 112(a) of the AGOA is claimed with respect to such articles.

Part II—Implementation of the CBTPA

Sec. 6. *Apparel Articles Assembled from Fabrics or Yarn Not Available in Commercial Quantities.* The Committee is authorized to exercise the authority vested in the President under section 213(b)(2)(A)(v)(II)(aa) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v)(II)(aa)), as added by section 211(a) of the CBTPA, to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The Committee and the USTR are jointly authorized to exercise the authority vested in the President under sections 213(b)(2)(A)(v)(II)(bb), (cc), and (ee) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v)(II)(bb), (cc), and (ee)), as added by section 211(a) of the CBTPA, to obtain advice from the appropriate advisory committee, to submit a report to the appropriate Congressional committees, and to consult with those Congressional committees. The USTR is authorized to exercise the authority vested in the President under section 213(b)(2)(A)(v)(II)(bb) of the CBERA to obtain advice from the USITC.

Sec. 7. *Certain Interlinings.* The Committee is authorized to exercise the authority vested in the President under section 213(b)(2)(A)(vii)(II)(cc) of the CBERA (19 U.S.C. 2703(b)(2)(A)(vii)(II)(cc)), as added by section 211(a) of the CBTPA, to determine whether U.S. manufacturers are producing interlinings in the United States in commercial quantities. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the **Federal Register**. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 8. *Handloomed, Handmade, and Folklore Articles.* The Committee, after consultation with the Commissioner, is authorized to exercise the authority vested in the President under section 213(b)(2)(C) of the CBERA (19 U.S.C. 2703(b)(2)(C)), as added by section 211(a) of the CBTPA, to consult with representatives of CBTPA beneficiary countries for the purpose of identifying particular textile and apparel goods that are mutually agreed upon as being handloomed, hand made, or folklore goods within the meaning of that section. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

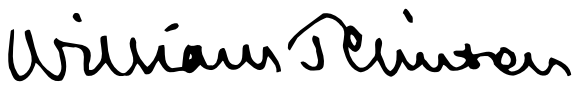
Sec. 9. *Penalties for Transshipments.* The Committee, after consultation with the Commissioner, is authorized to exercise the authority vested in the President under section 213(b)(2)(D) of the CBERA (19 U.S.C. 2703(b)(2)(D)), as added by section 211(a) of the CBTPA, to determine, based on sufficient evidence, whether an exporter has engaged in transshipment and, if transshipment has occurred, to deny all benefits under the CBTPA to any such

exporter, and any successor of such exporter, for a period of 2 years; to request that any CBTPA beneficiary country through whose territory transshipment has occurred take all necessary and appropriate actions to prevent such transshipment; and to impose the penalty provided in section 213(b)(2)(D)(ii) of the CBERA on a CBTPA beneficiary country if the Committee determines that such country is not taking such actions. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the **Federal Register**. The Commissioner shall take such actions to carry out any such determination as directed by the Committee.

Sec. 10. *Bilateral Emergency Tariff Actions.* The Committee is authorized to exercise the authority vested in the President under section 213(b)(2)(E) of the CBERA (19 U.S.C. 2703(b)(2)(E)), as added by section 211(a) of the CBTPA, to take bilateral emergency tariff actions, if the Committee determines that the conditions provided in section 213(b)(2)(E) of the CBERA are satisfied. The Committee shall establish procedures to ensure appropriate public participation in any such determination. The determination or determinations of the Committee under this section shall be set forth in a notice or notices that the Committee shall cause to be published in the **Federal Register**. The Commissioner shall take such actions to carry out any such bilateral emergency tariff action as directed by the Committee.

Part III—General Provisions

Sec. 11. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
January 17, 2001.

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Federal Register

Monday,
January 22, 2001

Part XX

The President

Proclamation 7392—Boundary Enlargement and Modifications of the Buck Island Reef National Monument

Proclamation 7393—Establishment of the Carrizo Plain National Monument

Proclamation 7394—Establishment of the Kasha-Katuwe Tent Rocks National Monument

Proclamation 7395—Establishment of the Minidoka Internment National Monument

Proclamation 7396—Establishment of the Pompeys Pillar National Monument

Proclamation 7397—Establishment of the Sonoran Desert National Monument

Proclamation 7398—Establishment of the Upper Missouri River Breaks National Monument

Proclamation 7399—Establishment of the Virgin Islands Coral Reef National Monument

Federal Register
Vol. 66, No. 14
Monday, January 22, 2001

Presidential Documents

Title 3—

The President

Proclamation 7392 of January 17, 2001

Boundary Enlargement and Modifications of the Buck Island Reef National Monument

By the President of the United States of America

A Proclamation

Buck Island Reef National Monument was established on December 28, 1961 (Presidential Proclamation 3443), just north of St. Croix in the U.S. Virgin Islands, for the purpose of protecting Buck Island and its adjoining shoals, rocks, and undersea coral reef formations. Considered one of the finest marine gardens in the Caribbean Sea, the unique natural area and the rare marine life which are dependent upon it are subject to the constant threat of commercial exploitation and destruction. The monument's vulnerable floral and faunal communities live in a fragile, interdependent relationship and include habitats essential for sustaining the tropical marine ecosystem: coral reefs, sea grass beds, octocoral hardbottom, sand communities, algal plains, shelf edge, and oceanic habitats. The boundary enlargement effected by this proclamation brings into the monument additional objects of scientific and historic interest, and provides necessary further protection for the resources of the existing monument.

The expansion area includes additional coral reefs (patch, pur and groove, and deep and wall), unusual ''haystacks'' of elkhorn coral, barrier reefs, sea grass beds, and sand communities, as well as algal plains, shelf edge, and other supporting habitats not included within the initial boundary. Oceanic currents carry planktonic larvae of coral reef associated animals to the shallow nearshore coral reef and sea grass habitats, where they transform into their juvenile stage. As they mature over months or years, they move offshore and take up residence in the deeper coral reefs, octocoral hardbottom, and algal plains. Between the monument's nearshore habitats and its shelf edge spawning sites are habitats that play essential roles during specific developmental stages of many reef-associated species, including spawning migrations of many reef fish species and crustaceans. Several threatened and endangered species forage, breed, nest, rest, or calve in the waters included in the enlarged monument, including humpback whales, pilot whales, four species of dolphins, brown pelicans, least terns, and the hawksbill, leatherback, and green sea turtles. Countless species of reef fishes, invertebrates, plants, and over 12 species of sea birds utilize this area.

The ecologically important shelf edge is the spawning site for many reef species, such as most groupers and snappers, and the spiny lobster. Plummeting to abyssal depths, this habitat of vertical walls, honeycombed with holes and caves, is home to deepwater species and a refuge for other species.

The expansion area also contains significant cultural and historical objects. In March 1797, the slave ship Mary, captained by James Hunter of Liverpool, sank in this area, and its cargo of 240 slaves was saved and brought to Christiansted. In March 1803, the General Abercrombie, captained by James Booth of Liverpool, also wrecked in this area, and its cargo of 339 slaves was brought to Christiansted. Slave shipwrecks in U.S. waters are rare. The monument contains remnants of these wrecks. Other wrecks may also exist in the monument.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as an addition to the Buck Island Reef National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as an addition to the Buck Island Reef National Monument, for the purpose of care, management, and protection of the objects of historic and scientific interest situated on lands within the said monument, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Buck Island Reef National Monument Boundary Enlargement'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 18,135 marine acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

For the purpose of protecting the objects identified above, the Secretary shall prohibit all boat anchoring, provided that the Secretary may permit exceptions for emergency or authorized administrative purposes, and may issue permits for anchoring in deep sand bottom areas, to the extent that it is consistent with the protection of the objects.

For the purposes of protecting the objects identified above, the Secretary shall prohibit all extractive uses. This prohibition supersedes the limited authorization for extractive uses included in Proclamation 3443 of December 28, 1961.

Lands and interests in lands within the monument not owned or controlled by the United States shall be reserved as a part of the monument upon acquisition of title or control thereto by the United States.

The Secretary of the Interior shall manage the monument through the National Park Service, pursuant to applicable legal authorities, to implement the purposes of this proclamation. The National Park Service will manage the monument in a manner consistent with international law.

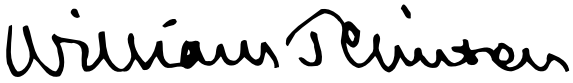
The Secretary of the Interior shall prepare a management plan, including the management of vessels in the monument, within 2 years that will address any further specific actions necessary to protect the objects identified above.

The enlargement of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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



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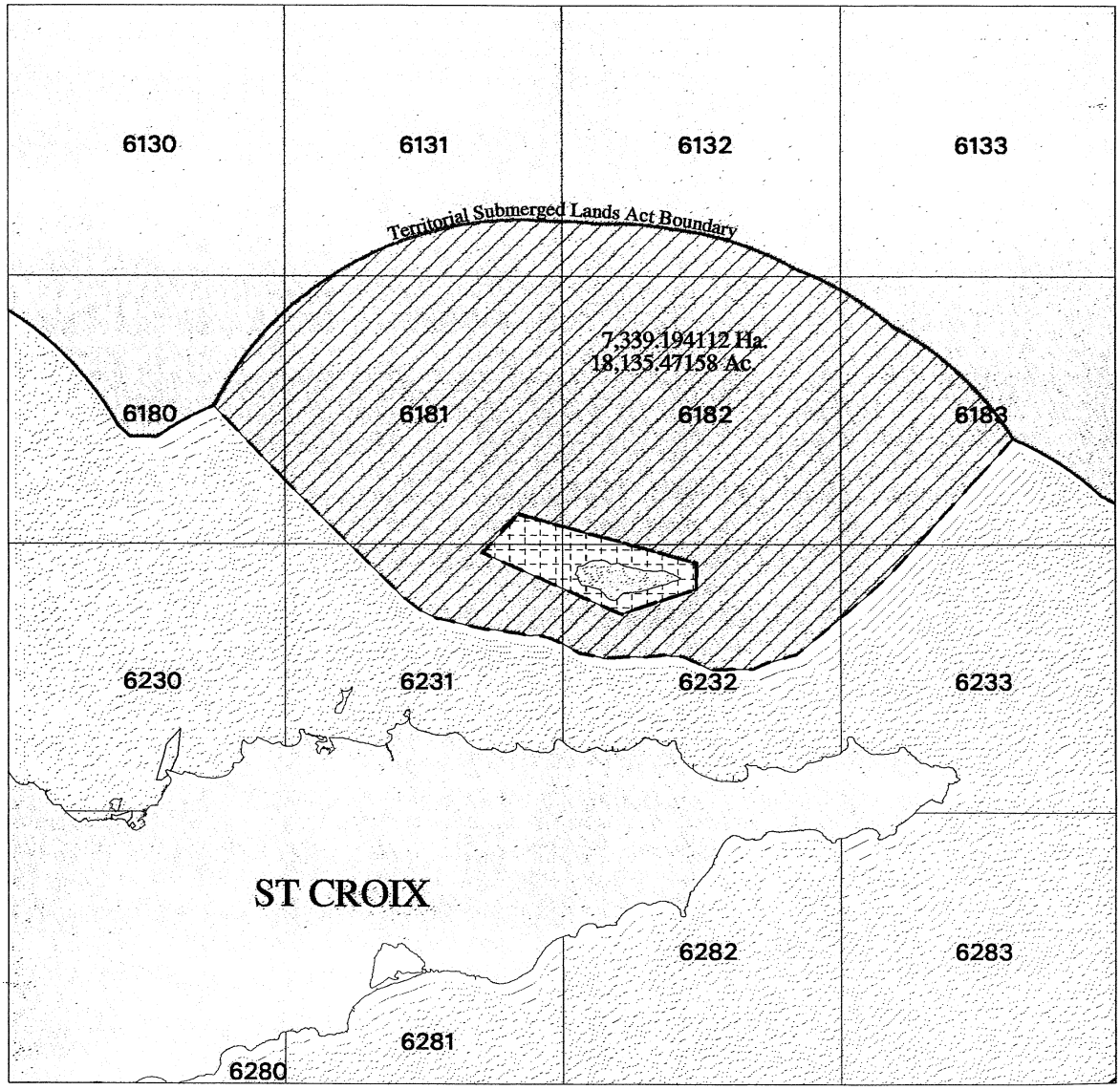
Buck Island Reef National Monument Expansion



[FR Doc. 01–2097

Filed 1–19–01; 8:45 am]

Billing code 3195–01–C

Presidential Documents

Proclamation 7393 of January 17, 2001

Establishment of the Carrizo Plain National Monument

By the President of the United States of America

A Proclamation

Full of natural splendor and rich in human history, the majestic grasslands and stark ridges in the Carrizo Plain National Monument contain exceptional objects of scientific and historic interest. Since the mid-1800s, large portions of the grasslands that once spanned the entire four hundred mile expanse of California's nearby San Joaquin Valley and other valleys in the vicinity have been eliminated by extensive land conversion to agricultural, industrial, and urban land uses. The Carrizo Plain National Monument, which is dramatically bisected by the San Andreas Fault zone, is the largest undeveloped remnant of this ecosystem, providing crucial habitat for the long-term conservation of the many endemic plant and animal species that still inhabit the area.

The monument offers a refuge for endangered, threatened, and rare animal species such as the San Joaquin kit fox, the California condor, the blunt-nosed leopard lizard, the giant kangaroo rat, the San Joaquin antelope squirrel, the longhorn fairy shrimp, and the vernal pool fairy shrimp. It supports important populations of pronghorn antelope and tule elk. The area is also home to many rare and sensitive plant species, including the California jewelflower, the Hoover's woolly-star, the San-Joaquin woolly-threads, the pale-yellow layia, the forked fiddleneck, the Carrizo peppergrass, the Lost Hills saltbush, the Temblor buckwheat, the recurved larkspur, and the Munz's tidy-tips. Despite past human use, the size, isolation, and relatively undeveloped nature of the area make it ideal for long-term conservation of the dwindling flora and fauna characteristic of the San Joaquin Valley region.

The Carrizo Plain National Monument also encompasses Soda Lake, the largest remaining natural alkali wetland in southern California and the only closed basin within the coastal mountains. As its name suggests, Soda Lake concentrates salts as water is evaporated away, leaving white deposits of sulfates and carbonates. Despite this harsh environment, small plant and animal species are well adapted to the setting, which is also important to migratory birds. During the winter months the lake fills with water and teems with thousands of beautiful lesser sandhill cranes, long-billed curlews, and mountain plovers.

The Carrizo Plain National Monument owes its existence to the geologic processes that occur along the San Andreas Fault, where two of the Earth's five great tectonic plates slide past one another, parallel to the axis of the Plain. Shifting along the fault created the Plain by rumpling the rocks to the northeast into the Temblor Range and isolating the Plain from the rest of the San Joaquin Valley. The area is world-famous for its spectacular exposures of fault-generated landforms. Stream valleys emerge from the adjacent mountains, only to take dramatic right-angle turns where they intersect the fault. Ponds and sags form where the ground is extended and subsides between branches of the fault. Benches form where the fault offsets valley walls. Many dramatic landscape features are products of the interplay between very rapid fault movement and slower erosion. The dry climate of the area produces low erosion rates, thereby preserving the spectacular effects of fault slip, folding, and warping. On the Plain, these fault-related events

happen intermittently, but with great force. In 1857, the strongest earthquake in California's recorded history ripped through the San Andreas Fault, wrenching the western side of the Carrizo Plain National Monument thirty-one feet northward.

The area is also distinguished for its significant fossil assemblages. The Caliente Formation, exposed on the southeast side of the Caliente Range, is host to abundant and diverse terrestrial fossil mammal remains of the Miocene Epoch (from 13 million to 25 million years ago). Fossils of five North American provincial mammalian ages (Arikareean, Hemingfordian, Barstovian, Clarendonian, Hemphillian) are represented in sedimentary rocks in that formation. These terrestrial fossil remains are interlaced with marine sedimentary rocks bearing fossils of mollusks, pectens, turitellas, and oysters.

In addition to its geologic and biological wealth, the area is rich in human history. Archaeologists theorize that humans have occupied the Carrizo Plain National Monument area since the Paleo-Indian Period (circa 11,000 to 9,000 B.C.). Bedrock mortar milling features, village middens, and elaborate pictographs are the primary manifestations of prehistoric occupation. Some of these, such as the Painted Rock and Sulphur Springs rock art sites, are recognized as world class. European expeditions through the area date back to the late 1700s, with settlement beginning in the 1850s. Livestock ranching, farming, and mining activities in the last century and a half are evidenced by numerous artifacts and historic ranch properties within the area.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Carrizo Plain National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Carrizo Plain National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Carrizo Plain National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 204,107 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. For the purpose of protecting the objects identified above, the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare a management plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of California with respect to fish and wildlife management.

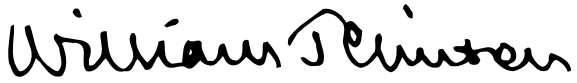
There is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water sufficient to fulfill the purposes for which this monument is established. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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



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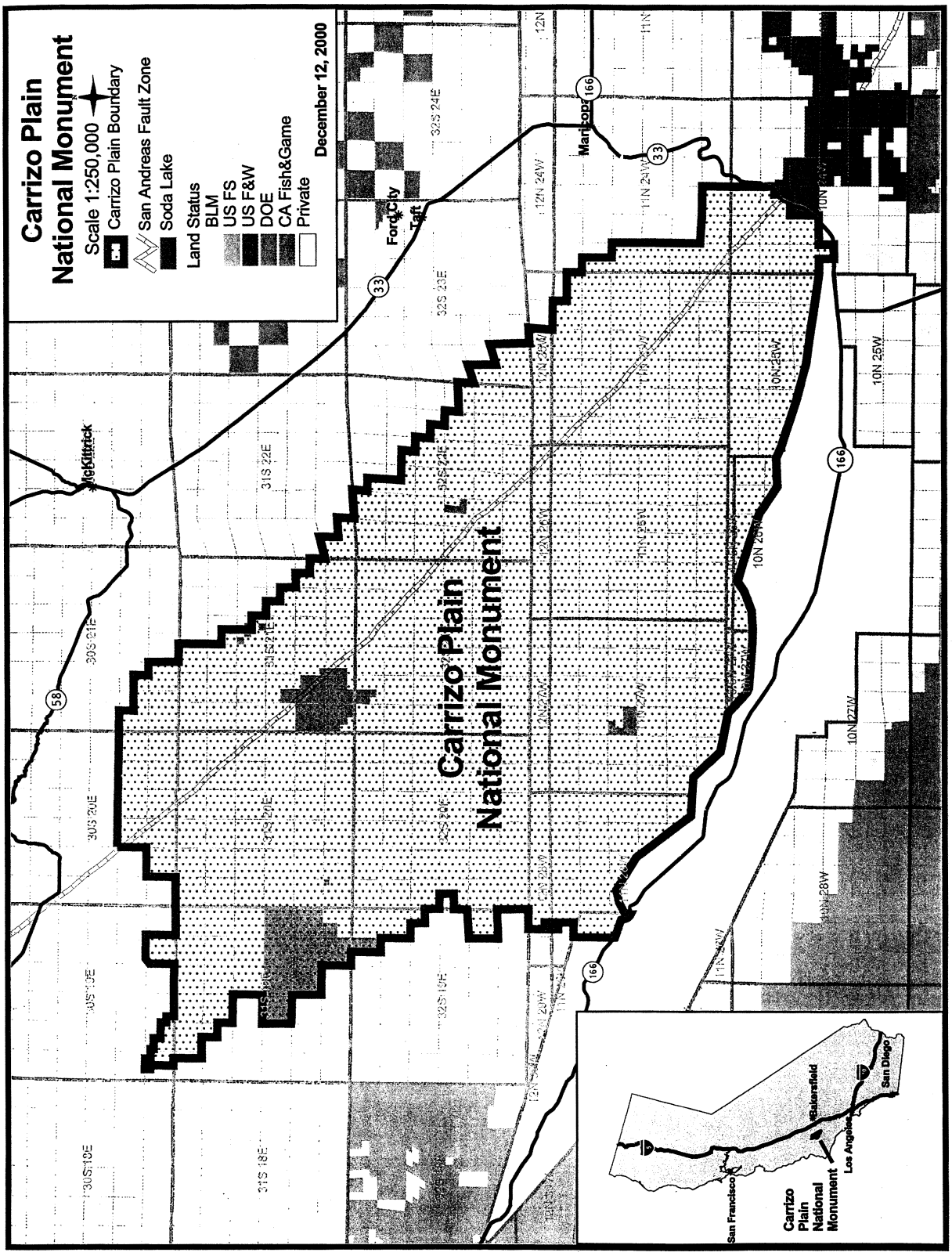


[FR Doc. 01–2098

Filed 1–19–01; 8:45 am]

Billing code 3195–01–C

Presidential Documents

Proclamation 7394 of January 17, 2001

Establishment of the Kasha-Katuwe Tent Rocks National Monument

By the President of the United States of America

A Proclamation

Located on the Pajarito Plateau in north central New Mexico, the Kasha-Katuwe Tent Rocks National Monument is a remarkable outdoor laboratory, offering an opportunity to observe, study, and experience the geologic processes that shape natural landscapes, as well as other cultural and biological objects of interest. The area is rich in pumice, ash, and tuff deposits, the light-colored, cone-shaped tent rock formations that are the products of explosive volcanic eruptions that occurred between 6 and 7 million years ago. Small canyons lead inward from cliff faces, and over time, wind and water have scooped openings of all shapes and sizes in the rocks and have contoured the ends of the ravines and canyons into smooth semicircles. In these canyons, erosion-resistant caprocks protect the softer tents below. While the formations are uniform in shape, they vary in height from a few feet to 90 feet, and the layering of volcanic material intersperses bands of grey with beige colored rock.

Amid the formations and in contrast to the muted colors of the rocks of the monument, vibrant green leaves and red bark of manzanita, a shrubby species from the Sierra Madre of Mexico, cling to the cracks and crevices of the cliff faces. Red-tailed hawks, kestrels, violet-green swallows, and Western bluebirds soar above the canyons and use the pinion and ponderosa covered terrain near the cliffs.

The complex landscape and spectacular geologic scenery of the Kasha-Katuwe Tent Rocks National Monument has been a focal point for visitors for centuries. Human settlement is believed to have begun in the monument as a series of campsites during the Archaic period, from approximately 5500 B.C. During the fifteenth century, several large ancestral pueblos were established in the area. Their descendants, the Pueblo de Cochiti, still inhabit the surrounding area. Although the Spanish explorer Don Juan de Oñate reached the Pajarito Plateau in 1598, it was not until the late eighteenth century that families began to claim land grants around Tent Rocks from the Spanish Crown. Remnants of human history are scattered throughout the monument.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Kasha-Katuwe Tent Rocks National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of

June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Kasha-Katuwe Tent Rocks National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Kasha-Katuwe Tent Rocks National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 4,148 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument.

For the purpose of protecting the objects identified above, the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities and in close cooperation with the Pueblo de Cochiti, to implement the purposes of this proclamation.

The Secretary of the Interior shall prepare, within 3 years of this date, a management plan for this monument, and shall promulgate such regulations for its management as he deems appropriate. The management plan shall include appropriate transportation planning that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation and to further the purposes of the American Indian Religious Freedom Act of August 11, 1978 (42 U.S.C. 1996).

Only a very small amount of livestock grazing occurs inside the monument. The Secretary of the Interior shall retire the portion of the grazing allotments within the monument, pursuant to applicable law, unless the Secretary specifically finds that livestock grazing will advance the purposes of the proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of New Mexico with respect to fish and wildlife management.

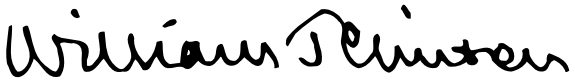
This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Secretary shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord two thousand one, and of the

Independence of the United States of America the two hundred and twenty-fifth.



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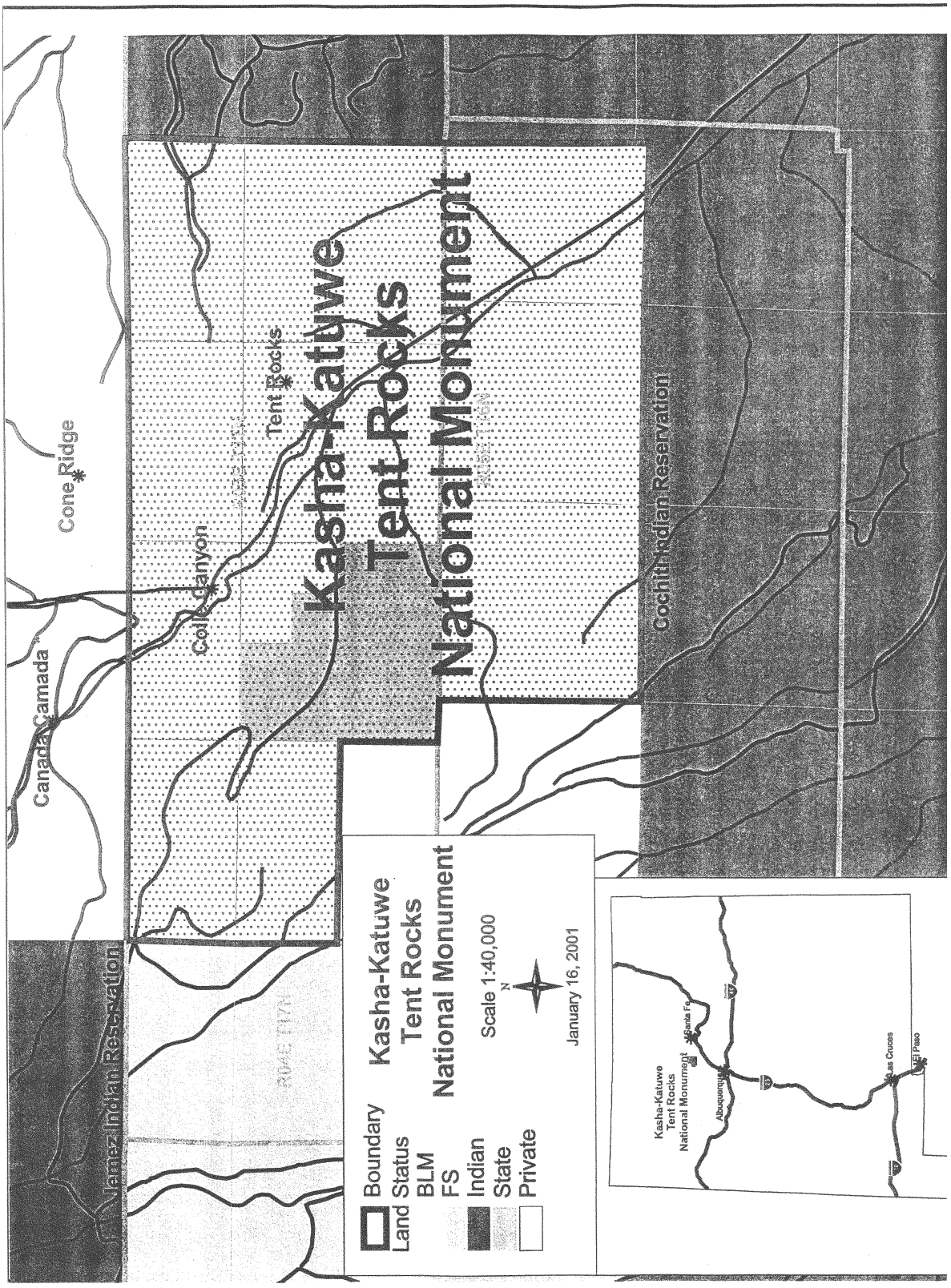

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Federal Register
Vol. 66, No. 14
Monday, January 22, 2001

Presidential Documents

Proclamation 7395 of January 17, 2001

Establishment of the Minidoka Internment National Monument

By the President of the United States of America

A Proclamation

The Minidoka Internment National Monument is a unique and irreplaceable historical resource which protects historic structures and objects that provide opportunities for public education and interpretation of an important chapter in American history—the internment of Japanese Americans during World War II.

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066, authorizing the Secretary of War and military commanders to designate military areas from which ''any or all persons may be excluded'' and to ''provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary.''

Starting in early 1942, military authorities began designating military exclusion areas in the States of California, Washington, Oregon, and Arizona, and the territory of Alaska. Following the signing of Executive Order 9066, American citizens and resident aliens of Japanese ancestry living in the designated exclusion areas were ordered to evacuate their homes and businesses and report to temporary assembly centers located at fairgrounds, horse racetracks, and other make-shift facilities.

To provide more permanent accommodations for the evacuees, President Roosevelt established the War Relocation Authority (WRA) in March 1942. The WRA oversaw the construction of ten relocation centers on Federally owned lands in remote areas of six western States and Arkansas, including the Minidoka Relocation Center in Idaho. Alaskan Native residents of the Aleutian and Pribiloff Islands and members of other ethnic and religious groups were also relocated or interned during the course of the war.

Established in August 1942, the Minidoka Relocation Center, also known as the Hunt Site, was located on Federal lands in Jerome County, in south central Idaho. During its operation from August 1942 to October 1945, the population reached a peak of 9,397 Japanese Americans from Washington State, Oregon, and Alaska. The Center included over 33,000 acres of land with administrative and residential facilities located on approximately 950 acres. The Center had more than 600 buildings including administrative, religious, residential, educational, mess, medical, manufacturing, warehouse, security, and other structures.

Living conditions at Minidoka and the other centers were harsh. Internees were housed in crude barracks and cramped quarters, and they shared communal facilities. Internees engaged in irrigated agriculture, livestock production, and light manufacturing to produce food and garments for the camp. Approximately 1,000 internees from Minidoka served in the U.S. military. Fifty-four Japanese American servicemen from Minidoka were killed in action.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic

landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of lands, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Minidoka Internment National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Minidoka Internment National Monument for the purpose of protecting the historic structures and objects of historic interest contained therein, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Minidoka Internment National Monument'' attached to and forming a part of this proclamation. The Federal lands and interests in land reserved consist of approximately 72.75 acres, which is the smallest area compatible with the proper care and management of the structures and objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land or other Federal laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The Secretary of the Interior, pursuant to legal authorities, shall manage the monument and shall transfer administration of the monument to the National Park Service to implement the purposes of this proclamation.

To carry out the purposes of this proclamation and to interpret the relocation and internment of Japanese Americans during World War II, the Secretary of the Interior, through the National Park Service, shall prepare a management plan for the monument within 3 years of this date.

This proclamation does not reserve water as a matter of Federal law nor relinquish any water rights held by the Federal Government existing on this date. The Secretary shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

The establishment of this monument is subject to valid existing rights, provided that nothing in this proclamation shall interfere with the operation and maintenance of the Northside Canal to the extent that any such activities, that are not valid existing rights, are consistent with the purposes of the proclamation.

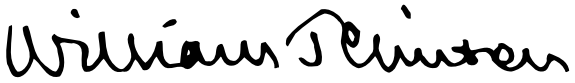
Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of January, in the year of our Lord two thousand one, and of the

Independence of the United States of America the two hundred and twenty-fifth.



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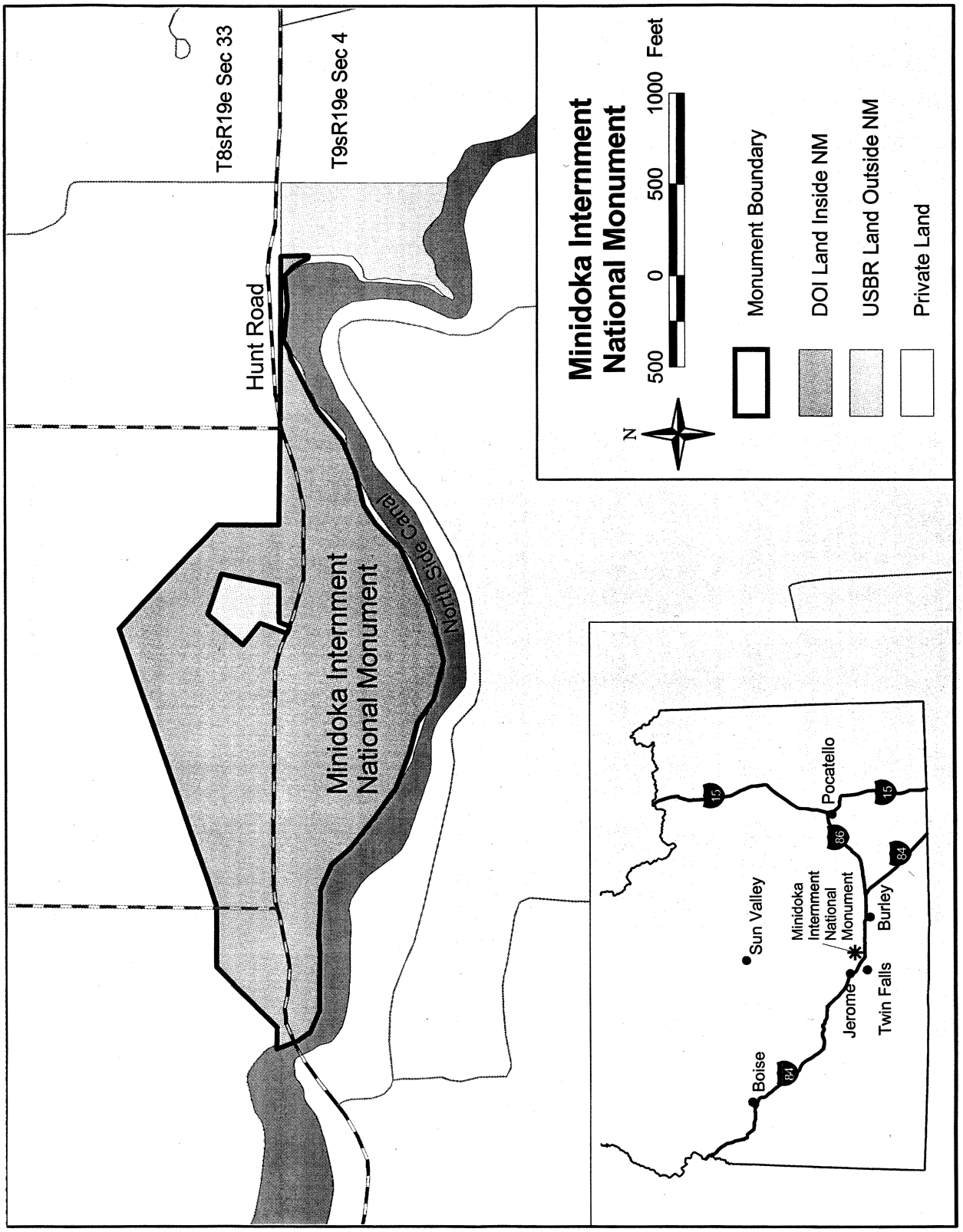


[FR Doc. 01–2100

Filed 1–19–01; 8:45 am]

Billing code 3195–01–C

Presidential Documents

Proclamation 7396 of January 17, 2001

Establishment of the Pompeys Pillar National Monument

By the President of the United States of America

A Proclamation

Pompeys Pillar National Monument is a massive sandstone outcrop that rises from an almost two-acre base on the banks of the Yellowstone River 150 feet toward Montana's Big Sky, east of Billings. The monument's premier location at a natural ford in the Yellowstone River, and its geologic distinction as the only major sandstone formation in the area, have made Pompeys Pillar a celebrated landmark and outstanding observation point for more than eleven thousand years of human occupation. Hundreds of markings, petroglyphs, and inscriptions left by visitors have transformed this geologic phenomenon into a living journal of the American West.

The monument's most notable visitor, Captain William Clark of the Lewis and Clark Expedition, arrived at Pompeys Pillar on July 25, 1806, on his return trip from the Pacific coast. Clark's journal recorded his stop at this ''remarkable rock'' with its ''extensive view in every direction.'' He described an idyllic landscape of grassy plains, snow-capped mountains, and cliffs abutting the wandering river. Clark marked his presence by engraving his name and the date of his visit on the outcrop. This simple inscription is the only remaining physical evidence of Lewis and Clark's epic journey. In his journal, Clark named the rock Pompy's Tower, Pompy being Clark's nickname for Sacagawea's young son, Jean Baptiste Charbonneau, who was born at the expedition's winter camp at Fort Mandan on February 11, 1805. The name was changed to Pompeys Pillar by author Nicholas Biddle when his account of the Expedition was published in 1814.

Ethnographic and archaeological evidence indicates that the Pillar was a place of ritual and religious activity. Hundreds of petroglyphs on the face of the rock, noted by Clark in his journal, reflect the importance of the monument to early peoples. The Crow people, the dominant residents of the region when Clark passed through, call the pillar the ''Mountain Lions Lodge'' in their language, and it figures prominently in Crow oral history. Pompeys Pillar also includes the markings and signature of a host of characters from the pioneer past, including fur trappers, Yellowstone River steamboat men, frontier army troops, railroad workers, missionaries, and early settlers. In 1873, Lieutenant Colonel George Armstrong Custer and his men camped at its base, where they came under attack from Sioux snipers.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Pompeys Pillar National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Pompeys Pillar National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Pompeys Pillar National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 51 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation.

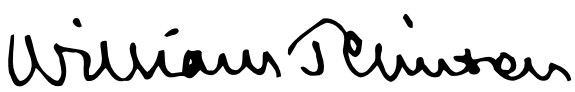
The establishment of this monument is subject to any valid existing rights, including the mineral estate held by the United States in trust for the Crow Tribe.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Montana with respect to fish and wildlife management.

This proclamation does not reserve water as a matter of Federal law. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation. The Secretary shall work with appropriate State authorities to ensure that any water resources needed for monument purposes are available.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however,the national monument shall be the dominant reservation. Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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



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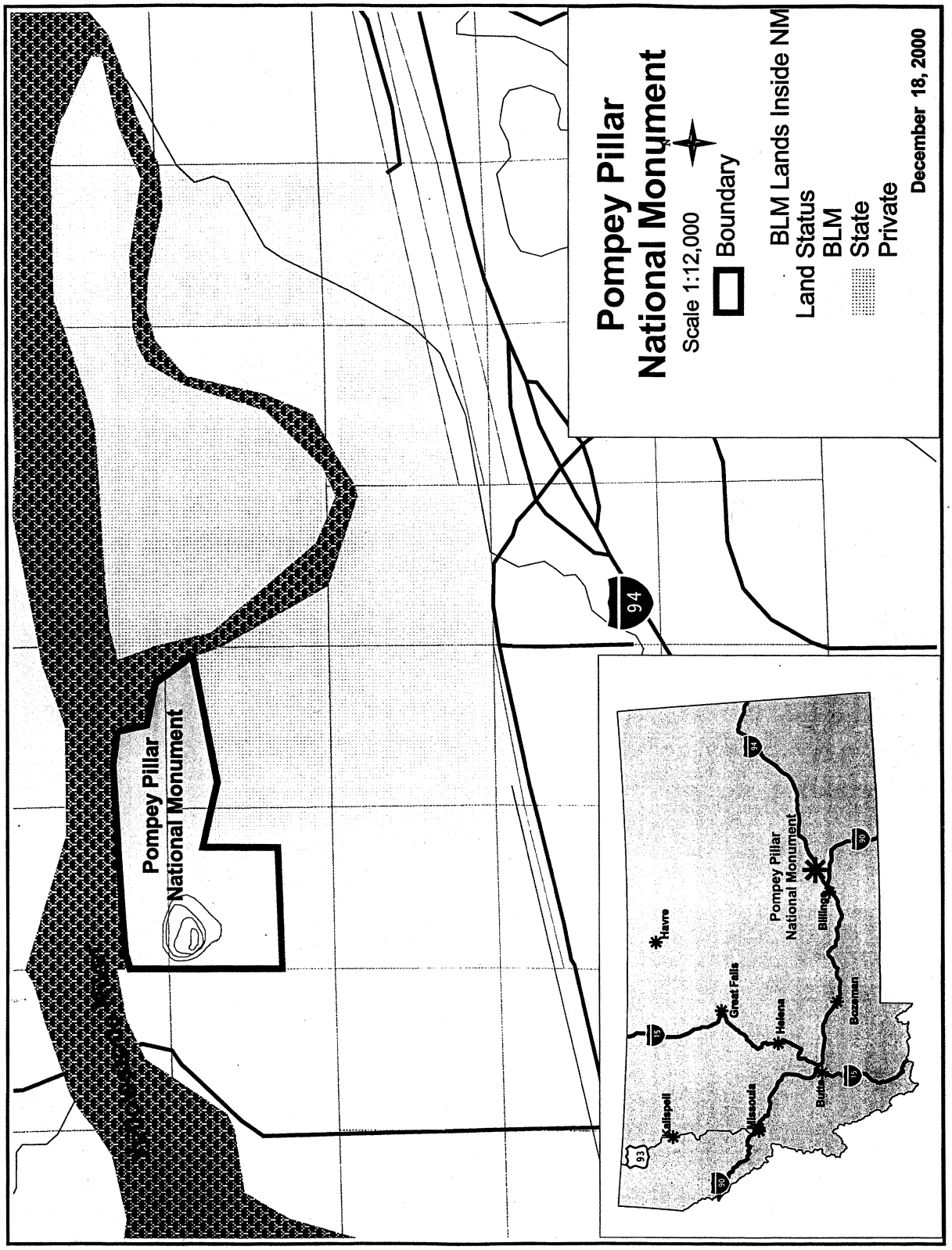


[FR Doc. 01–2101

Filed 1–19–01; 8:45 am]

Billing code 3195–01–C

Presidential Documents

Proclamation 7397 of January 17, 2001

Establishment of the Sonoran Desert National Monument

By the President of the United States of America

A Proclamation

The Sonoran Desert National Monument is a magnificent example of untrammeled Sonoran desert landscape. The area encompasses a functioning desert ecosystem with an extraordinary array of biological, scientific, and historic resources. The most biologically diverse of the North American deserts, the monument consists of distinct mountain ranges separated by wide valleys, and includes large saguaro cactus forest communities that provide excellent habitat for a wide range of wildlife species.

The monument's biological resources include a spectacular diversity of plant and animal species. The higher peaks include unique woodland assemblages, while the lower elevation lands offer one of the most structurally complex examples of palo verde/mixed cacti association in the Sonoran Desert. The dense stands of leguminous trees and cacti are dominated by saguaros, palo-verde trees, ironwood, prickly pear, and cholla. Important natural water holes, known as tinajas, exist throughout the monument. The endangered acuna pineapple cactus is also found in the monument.

The most striking aspect of the plant communities within the monument are the abundant saguaro cactus forests. The saguaro is a signature plant of the Sonoran Desert. Individual saguaro plants are indeed magnificent, but a forest of these plants, together with the wide variety of trees, shrubs, and herbaceous plants that make up the forest community, is an impressive site to behold. The saguaro cactus forests within the monument are a national treasure, rivaling those within the Saguaro National Park.

The rich diversity, density, and distribution of plants in the Sand Tank Mountains area of the monument is especially striking and can be attributed to the management regime in place since the area was withdrawn for military purposes in 1941. In particular, while some public access to the area is allowed, no livestock grazing has occurred for nearly 50 years. To extend the extraordinary diversity and overall ecological health of the Sand Tanks Mountains area, land adjacent and with biological resources similar to the area withdrawn for military purposes should be subject to a similar management regime to the fullest extent possible.

The monument contains an abundance of packrat middens, allowing for scientific analysis of plant species and climates in past eras. Scientific analysis of the midden shows that the area received far more precipitation 20,000 years ago, and slowly became more arid. Vegetation for the area changed from juniper- oak-pinion pine woodland to the vegetation found today in the Sonoran Desert, although a few plants from the more mesic period, including the Kofa Mountain barberry, Arizona rosewood, and junipers, remain on higher elevations of north-facing slopes.

The lower elevations and flatter areas of the monument contain the creosote-bursage plant community. This plant community thrives in the open expanses between the mountain ranges, and connects the other plant communities together. Rare patches of desert grassland can also be found throughout the monument, especially in the Sand Tank Mountains area. The washes

in the area support a much denser vegetation community than the surrounding desert, including mesquite, ironwood, paloverde, desert honeysuckle, chuperosa, and desert willow, as well as a variety of herbaceous plants. This vegetation offers the dense cover bird species need for successful nesting, foraging, and escape, and birds heavily use the washes during migration.

The diverse plant communities present in the monument support a wide variety of wildlife, including the endangered Sonoran pronghorn, a robust population of desert bighorn sheep, especially in the Maricopa Mountains area, and other mammalian species such as mule deer, javelina, mountain lion, gray fox, and bobcat. Bat species within the monument include the endangered lesser long-nosed bat, the California leaf-nosed bat, and the cave myotis. Over 200 species of birds are found in the monument, including 59 species known to nest in the Vekol Valley area. Numerous species of raptors and owls inhabit the monument, including the elf owl and the western screech owl. The monument also supports a diverse array of reptiles and amphibians, including the Sonoran desert tortoise and the red-backed whiptail. The Bureau of Land Management has designated approximately 25,000 acres of land in the Maricopa Mountains area as critical habitat for the desert tortoise. The Vekol Valley and Sand Tank Mountain areas contain especially diverse and robust populations of amphibians. During summer rainfall events, thousands of Sonoran green toads in the Vekol Valley can be heard moving around and calling out.

The monument also contains many significant archaeological and historic sites, including rock art sites, lithic quarries, and scattered artifacts. Vekol Wash is believed to have been an important prehistoric travel and trade corridor between the Hohokam and tribes located in what is now Mexico. Signs of large villages and permanent habitat sites occur throughout the area, and particularly along the bajadas of the Table Top Mountains. Occupants of these villages were the ancestors of today's O'odham, Quechan, Cocopah, Maricopa, and other tribes. The monument also contains a much used trail corridor 23 miles long in which are found remnants of several important historic trails, including the Juan Bautista de Anza National Historic Trail, the Mormon Battalion Trail, and the Butterfield Overland Stage Route.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS, it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Sonoran Desert National Monument.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Sonoran Desert National Monument, for the purpose of protecting the objects identified above, all lands and interest in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Sonoran Desert National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 486,149 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

For the purpose of protecting the objects identified above, all motorized and mechanized vehicle use off road will be prohibited, except for emergency or authorized administrative purposes.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Arizona with respect to fish and wildlife management.

The establishment of this monument is subject to valid existing rights.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. Lands and interests in lands within the monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

This proclamation does not reserve water as a matter of Federal law nor relinquish any water rights held by the Federal Government existing on this date. The Federal land management agencies shall work with appropriate State authorities to ensure that water resources needed for monument purposes are available.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, to implement the purposes of this proclamation. That portion identified as Area A on the map, however, shall be managed under the management arrangement established by section 3 of Public Law No. 99-606, 100 Stat. 3460-61, until November 6, 2001, at which time, pursuant to section 5(a) of Public Law No. 99-606, 100 Stat. 3462-63, the military withdrawal terminates. At that time, the Secretary of the Interior shall assume management responsibility for Area A through the Bureau of Land Management.

The Secretary of the Interior shall prepare a management plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument; provided, however, that grazing permits on Federal lands within the monument south of Interstate Highway 8 shall not be renewed at the end of their current term; and provided further, that grazing on Federal lands north of Interstate 8 shall be allowed to continue only to the extent that the Bureau of Land Management determines that grazing is compatible with the paramount purpose of protecting the objects identified in this proclamation.

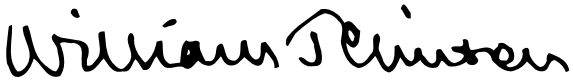
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Nothing in this proclamation shall preclude low level overflights of military aircraft, the designation of new units of special use airspace, or the use or establishment of military flight training routes over the lands included in this proclamation.

In order to protect the public during operations at the adjacent Barry M. Goldwater Range, and to continue management practices that have resulted in an exceptionally well preserved natural resource, the current procedures for public access to the portion of the monument depicted as Area A on the attached map shall remain in full force and effect, except to the extent that the United States Air Force agrees to different procedures which the Bureau of Land Management determines are compatible with the protection of the objects identified in this proclamation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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



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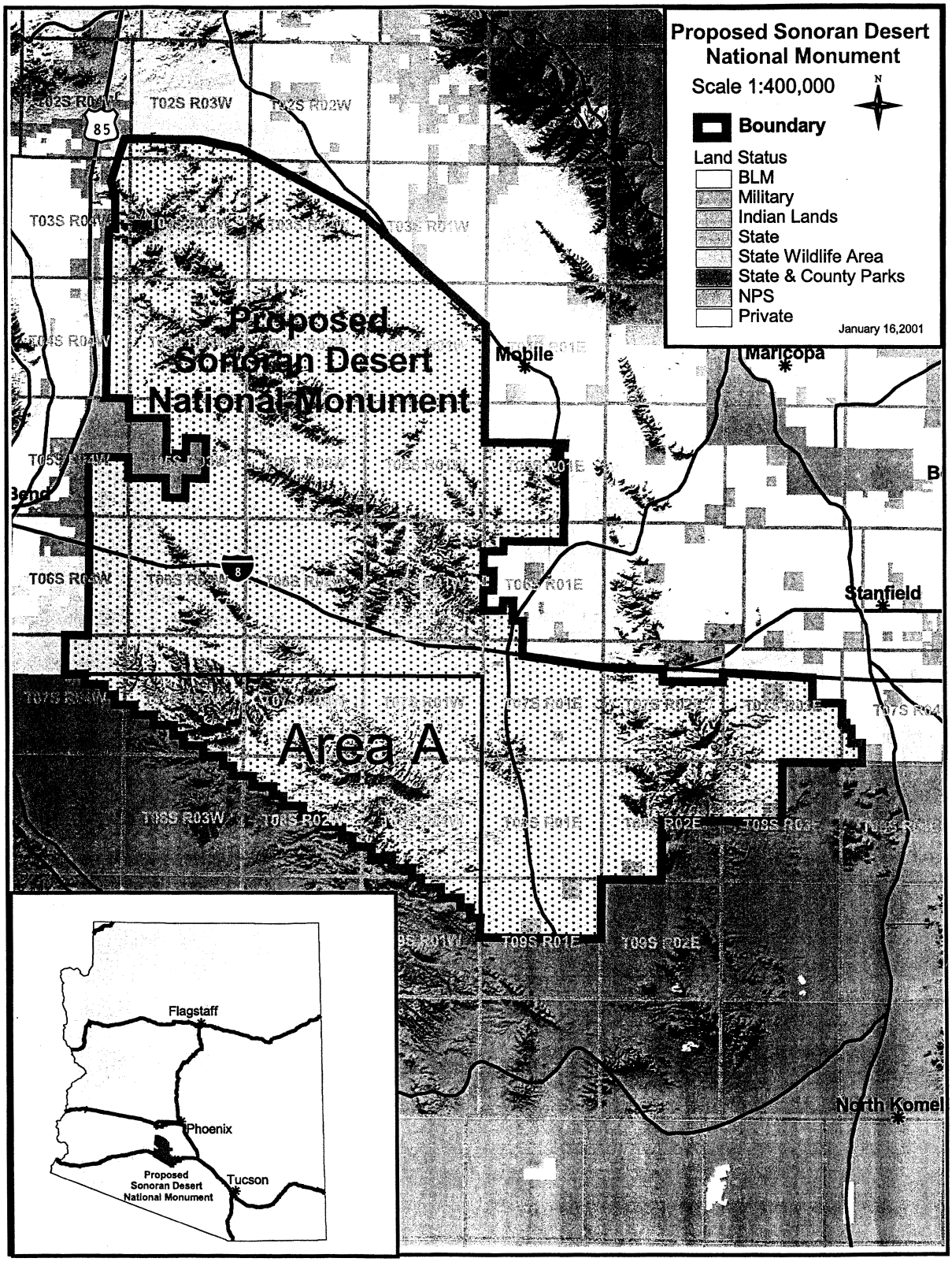


[FR Doc. 01–2102

Filed 1–19–01; 8:45 am]

Billing code 3195–01–C

Presidential Documents

Proclamation 7398 of January 17, 2001

Establishment of the Upper Missouri River Breaks National Monument

By the President of the United States of America

A Proclamation

The Upper Missouri River Breaks National Monument contains a spectacular array of biological, geological, and historical objects of interest. From Fort Benton upstream into the Charles M. Russell National Wildlife Refuge, the monument spans 149 miles of the Upper Missouri River, the adjacent Breaks country, and portions of Arrow Creek, Antelope Creek, and the Judith River. The area has remained largely unchanged in the nearly 200 years since Meriwether Lewis and William Clark traveled through it on their epic journey. In 1976, the Congress designated the Missouri River segment and corridor in this area a National Wild and Scenic River (Public Law 94–486, 90 Stat. 2327). The monument also encompasses segments of the Lewis and Clark National Historic Trail, the Nez Perce National Historic Trail, and the Cow Creek Island Area of Critical Environmental Concern.

Lewis and Clark first encountered the Breaks country of the monument on their westward leg. In his journal, Clark described the abundant wildlife of the area, including mule deer, elk, and antelope, and on April 29, 1805, the Lewis and Clark expedition recorded the first big horn sheep observation by non-Indians in North America. Lewis' description of the magnificent White Cliffs area on the western side of the monument is especially vivid, and not just for his sometimes colorful spellings:

''The hills and river Clifts which we passed today exhibit a most romantic appearance.... The bluffs of the river rise to hight of from 2 to 300 feet and in most places nearly perpendicular; they are formed of remarkable white sandstone which is sufficiently soft to give way readily to the impression of water...

''The water in the course of time ... has trickled down the soft sand clifts and woarn it into a thousand grotesque figures, which with the help of a little immagination and an oblique view, at a distance are made to represent eligant ranges of lofty freestone buildings, having their parapets well stocked with statuary; collumns of various sculptures both grooved and plain, are also seen supporting long galleries in front of these buildings; in other places on a much nearer approach and with the help of less immagination we see the remains or ruins of eligant buildings; some collumns standing and almost entire with their pedestals and capitals; others retaining their pedestals but deprived by time or accident of their capitals, some lying prostrate an broken othe[r]s in the form of vast pyramids of conic structure bearing a serees of other pyramids on their tops...

As we passed on it seemed as if those seens of visionary inchantment would never have and [an] end; for here it is too that nature presents to the view of the traveler vast ranges of walls of tolerable workmanship, so perfect indeed are those walls that I should have thought that nature had attempted here to rival the human art of masonry...''

The monument is covered with sedimentary rocks deposited in shallow seas that covered central and eastern Montana during the Cretaceous period.

Glaciers, volcanic activity, and erosion have since folded, faulted, uplifted, and sculpted the landscape to the majestic form it takes today.

The area remains remote and nearly as undeveloped as it was in 1805. Many of the biological objects described in Lewis' and Clark's journals continue to make the monument their home. The monument boasts the most viable elk herd in Montana and one of the premier big horn sheep herds in the continental United States. It contains essential winter range for sage grouse as well as habitat for prairie dogs. Lewis sent Jefferson a prairie dog specimen which was, as Lewis noted at the time, ''new to science.'' Abundant plant life along the River and across the Breaks country supports this wildlife. The lower reach of the Judith River, just above its confluence with the Missouri, contains one of the few remaining fully functioning cottonwood gallery forest ecosystems on the Northern Plains. Arrow Creek, originally called Slaughter River by Lewis and Clark, contains the largest concentration of antelope and mule deer in the monument as well as important spawning habitat for the endangered pallid sturgeon. An undammed tributary to the Missouri River, Arrow Creek is a critical seed source for cottonwood trees for the flood plain along the Missouri.

The cliff faces in the monument provide perching and nesting habitat for many raptors, including the sparrow hawk, ferruginous hawk, peregrine falcon, prairie falcon, and golden eagle. Several pairs of bald eagles nest along the River in the monument and many others visit during the late fall and early winter. Shoreline areas provide habitat for great blue heron, pelican, and a wide variety of waterfowl. The River and its tributaries in the monument host forty-eight fish species, including goldeye, drum, sauger, walleye, northern pike, channel catfish, and small mouth buffalo. The monument has one of the six remaining paddlefish populations in the United States. The River also supports the blue sucker, shovel nose sturgeon, sicklefin, sturgeon chub, and the endangered pallid sturgeon.

The Bullwacker area of the monument contains some of the wildest country on all the Great Plains, as well as important wildlife habitat. During the stress-inducing winter months, mule deer and elk move up to the area from the river, and antelope and sage grouse move down to the area from the benchlands. The heads of the coulees and breaks also contain archeological and historical sites, from teepee rings and remnants of historic trails to abandoned homesteads and lookout sites used by Meriwether Lewis.

Long before the time of Lewis and Clark, the area was inhabited by numerous native tribes, including the Blackfeet, Assiniboin, Gros Ventre (Atsina), Crow, Plains Cree, and Plains Ojibwa. The confluence of the Judith and Missouri Rivers was the setting for important peace councils in 1846 and 1855. In 1877, the Nez Perce crossed the Missouri and entered the Breaks country in their attempt to escape to Canada. The Cow Island Skirmish occurred in the Breaks and was the last encounter prior to the Nez Perce surrender to the U.S. Army at the Battle of Bear Paw just north of the monument. Pioneers and the Army followed Lewis and Clark in the 1830s establishing Fort Piegan, Fort McKenzie, and Fort Benton. Remnants of this rich history are scattered throughout the monument, and the River corridor retains many of the same qualities and much of the same appearance today as it did then.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Upper Missouri River Breaks National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Upper Missouri River Breaks National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Upper Missouri River Breaks National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 377,346 acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. The establishment of this monument is subject to valid existing rights. The Secretary of the Interior shall manage development on existing oil and gas leases within the monument, subject to valid existing rights, so as not to create any new impacts that would interfere with the proper care and management of the objects protected by this proclamation.

The Secretary of the Interior shall prepare a transportation plan that addresses the actions, including road closures or travel restrictions, necessary to protect the objects identified in this proclamation.

For the purpose of protecting the objects identified above, the Secretary shall prohibit all motorized and mechanized vehicle use off road, except for emergency or authorized administrative purposes.

Lands and interests in lands within the proposed monument not owned by the United States shall be reserved as a part of the monument upon acquisition of title thereto by the United States.

The Secretary of the Interior shall manage the monument through the Bureau of Land Management, pursuant to applicable legal authorities, including the National Wild and Scenic Rivers Act, to implement the purposes of this proclamation.

Because waters of the Upper Missouri River through the monument area have already been reserved through the Congress's designation of the area as a component of the National Wild and Scenic River System in 1976, this proclamation makes no additional reservation of water, except in two small tributaries, the Judith River and Arrow Creek. These tributaries contain outstanding objects of biological interest that are dependent on water, such as a fully functioning cottonwood gallery forest ecosystem that is rare in the Northern Plains. Therefore, there is hereby reserved, as of the date of this proclamation and subject to valid existing rights, a quantity of water in the Judith River and Arrow Creek sufficient to fulfill the purposes for which this monument is established. Nothing in this reservation shall be construed as a relinquishment or reduction of any water use or rights reserved or appropriated by the United States on or before the date of this proclamation.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Montana with respect to fish and wildlife management.

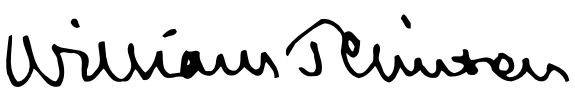
Nothing in this proclamation shall be deemed to enlarge or diminish the rights of any Indian tribe.

Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing permits or leases on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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



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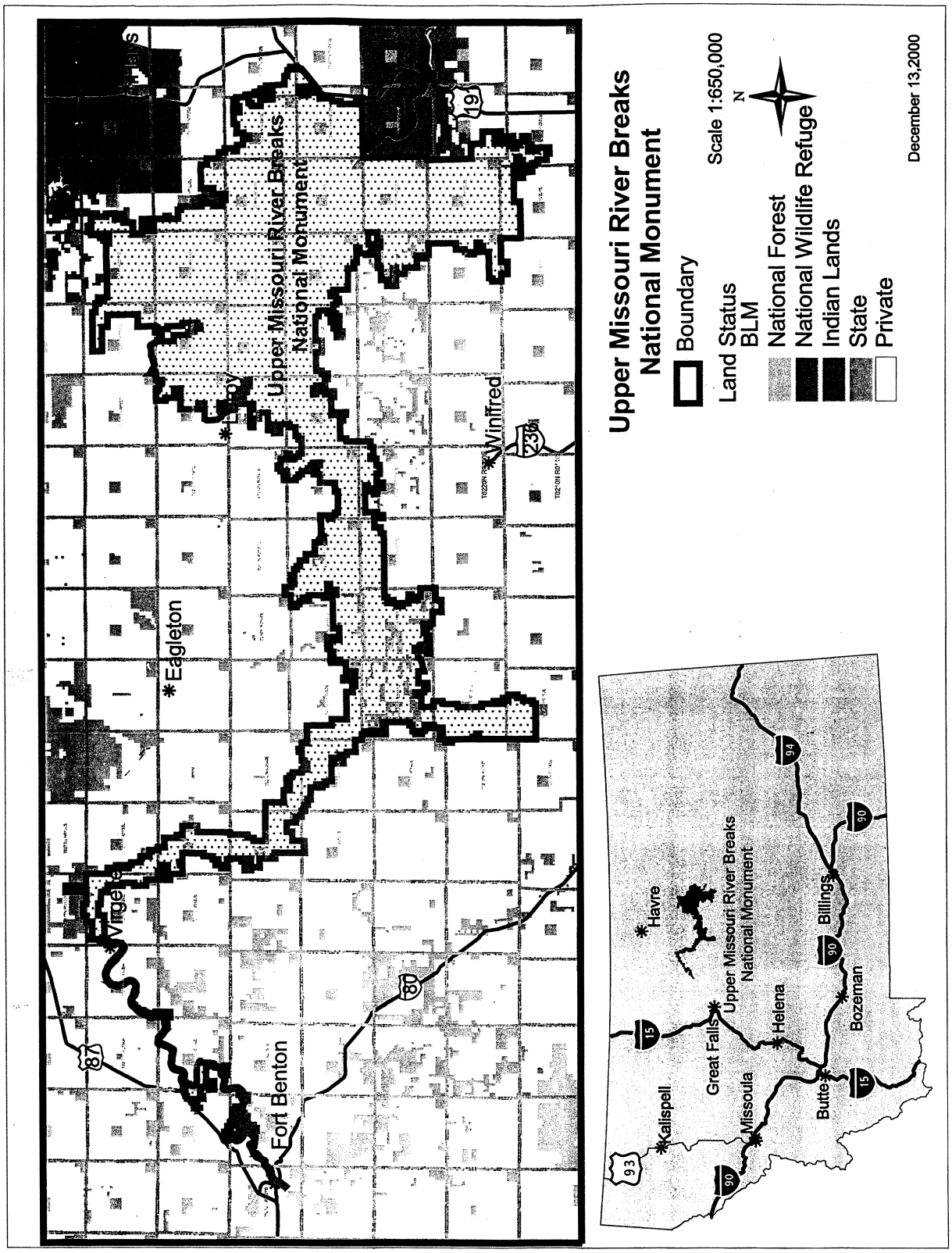


[FR Doc. 01–2103

Filed 1–19–01; 8:45 am]

Billing code 3195–01–C

Presidential Documents

Proclamation 7399 of January 17, 2001

Establishment of the Virgin Islands Coral Reef National Monument

By the President of the United States of America

A Proclamation

The Virgin Islands Coral Reef National Monument, in the submerged lands off the island of St. John in the U.S. Virgin Islands, contains all the elements of a Caribbean tropical marine ecosystem. This designation furthers the protection of the scientific objects included in the Virgin Islands National Park, created in 1956 and expanded in 1962. The biological communities of the monument live in a fragile, interdependent relationship and include habitats essential for sustaining and enhancing the tropical marine ecosystem: mangroves, sea grass beds, coral reefs, octocoral hardbottom, sand communities, shallow mud and fine sediment habitat, and algal plains. The fishery habitats, deeper coral reefs, octocoral hardbottom, and algal plains of the monument are all objects of scientific interest and essential to the long-term sustenance of the tropical marine ecosystem.

The monument is within the Virgin Islands, which lie at the heart of the insular Caribbean biome, and is representative of the Lesser Antillean biogeographic province. The island of St. John rises from a platform that extends several miles from shore before plunging to the abyssal depths of the Anegada trough to the south and the Puerto Rican trench to the north, the deepest part of the Atlantic Ocean. This platform contains a multitude of species that exist in a delicate balance, interlinked through complex relationships that have developed over tens of thousands of years.

As part of this important ecosystem, the monument contains biological objects including several threatened and endangered species, which forage, breed, nest, rest, or calve in the waters. Humpback whales, pilot whales, four species of dolphins, brown pelicans, roseate terns, least terns, and the hawksbill, leatherback, and green sea turtles all use portions of the monument. Countless species of reef fish, invertebrates, and plants utilize these submerged lands during their lives, and over 25 species of sea birds feed in the waters. Between the nearshore nursery habitats and the shelf edge spawning sites in the monument are habitats that play essential roles during specific developmental stages of reef-associated species, including spawning migrations of many reef fish species and crustaceans.

The submerged monument lands within Hurricane Hole include the most extensive and well-developed mangrove habitat on St. John. The Hurricane Hole area is an important nursery area for reef associated fish and invertebrates, instrumental in maintaining water quality by filtering and trapping sediment and debris in fresh water runoff from the fast land, and essential to the overall functioning and productivity of regional fisheries. Numerous coral reef-associated species, including the spiny lobster, queen conch, and Nassau grouper, transform from planktonic larvae to bottom-dwelling juveniles in the shallow nearshore habitats of Hurricane Hole. As they mature, they move offshore and take up residence in the deeper coral patch reefs, octocoral hardbottom, and algal plains of the submerged monument lands to the south and north of St. John.

The monument lands south of St. John are predominantly deep algal plains with scattered areas of raised hard bottom. The algal plains include communities of mostly red and calcareous algae with canopies as much as half a meter high. The raised hard bottom is sparsely colonized with corals, sponges, gorgonians, and other invertebrates, thus providing shelter for lobster, groupers, and snappers as well as spawning sites for some reef fish species. These algal plains and raised hard bottom areas link the shallow water reef, sea grass, and mangrove communities with the deep water shelf and shelf edge communities of fish and invertebrates.

Section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected.

WHEREAS it appears that it would be in the public interest to reserve such lands as a national monument to be known as the Virgin Islands Coral Reef National Monument:

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431), do proclaim that there are hereby set apart and reserved as the Virgin Islands Coral Reef National Monument, for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the United States within the boundaries of the area described on the map entitled ''Virgin Islands Coral Reef National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consist of approximately 12,708 marine acres, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, other than by exchange that furthers the protective purposes of the monument. For the purpose of protecting the objects identified above, the Secretary shall prohibit all boat anchoring, except for emergency or authorized administrative purposes.

For the purposes of protecting the objects identified above, the Secretary shall prohibit all extractive uses, except that the Secretary may issue permits for bait fishing at Hurricane Hole and for blue runner (hard nose) line fishing in the area south of St. John, to the extent that such fishing is consistent with the protection of the objects identified in this proclamation.

Lands and interests in lands within the monument not owned or controlled by the United States shall be reserved as a part of the monument upon acquisition of title or control thereto by the United States.

The Secretary of the Interior shall manage the monument through the National Park Service, pursuant to applicable legal authorities, to implement the purposes of this proclamation. The National Park Service will manage the monument in a manner consistent with international law.

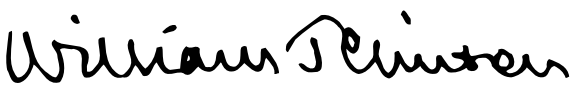
The Secretary of the Interior shall prepare a management plan, including the management of vessels in the monument, within 3 years, which addresses any further specific actions necessary to protect the objects identified in this proclamation.

The establishment of this monument is subject to valid existing rights.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

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



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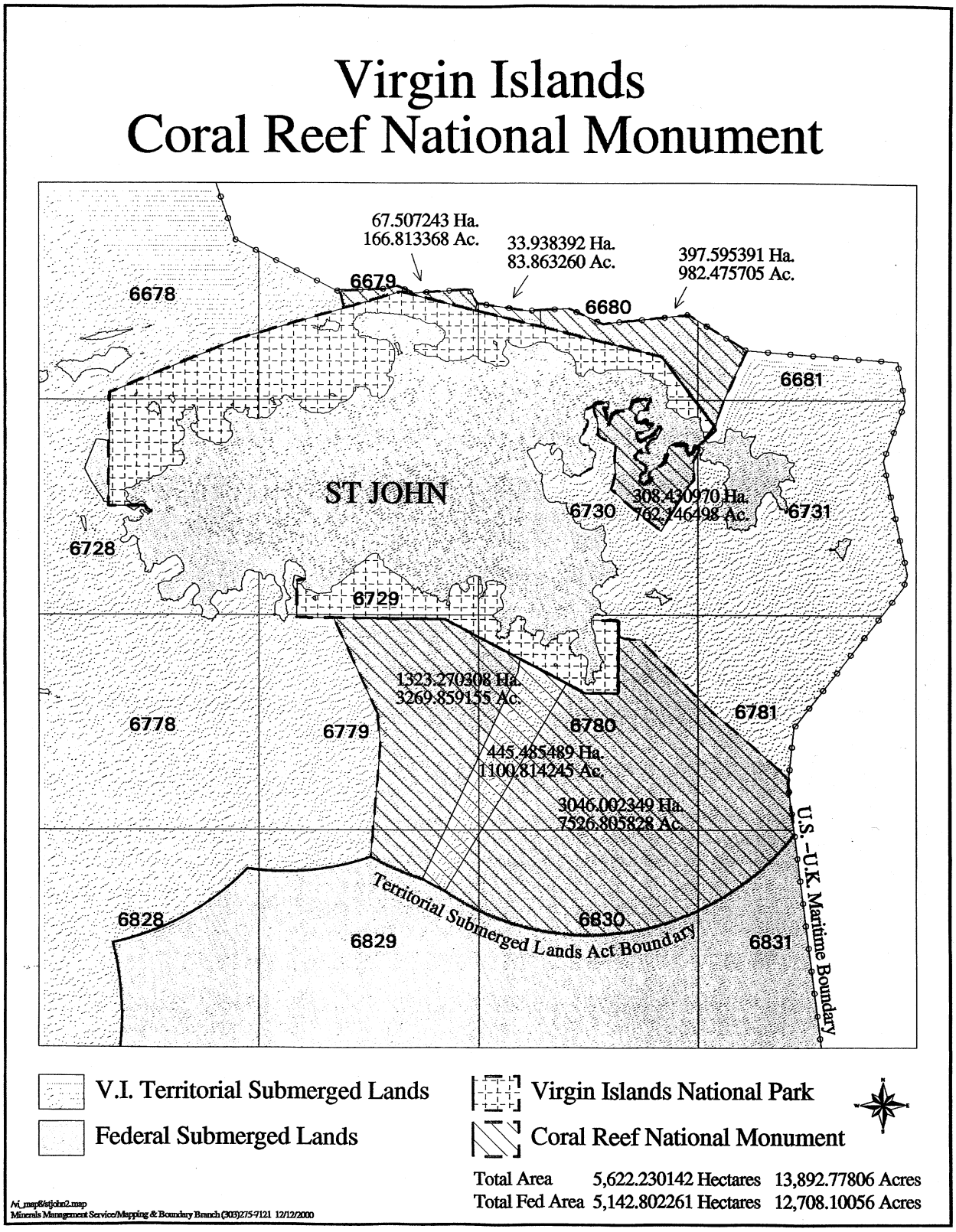

[FR Doc. 01–2104

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Federal Register

Monday,

January 22, 2001

Part XXI

The President

Notice of January 19, 2001—Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

Federal Register
Vol. 66, No. 14
Monday, January 22, 2001

Presidential Documents

Title 3—

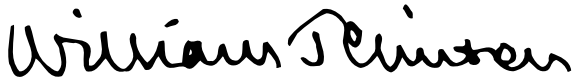
The President

Notice of January 19, 2001

Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process. The order, issued pursuant to the International Emergency Economic Powers Act, among other authorities, blocks the assets in the United States, or in the control of United States persons, of foreign terrorists who threaten to disrupt the Middle East peace process. I also prohibited transactions or dealings by United States persons in such property. On August 20, 1998, by Executive Order 13099, I identified four additional persons, including Usama bin Ladin, who threaten to disrupt the Middle East peace process. I have annually transmitted notices of the continuation of this national emergency to the Congress and the **Federal Register**. Last year's notice of continuation was published in the **Federal Register** on January 21, 2000. Because terrorist activities continue to threaten the Middle East peace process and vital interests of the United States in the Middle East, the national emergency declared on January 23, 1995, and the measures made effective on January 24, 1995, to deal with that emergency must continue in effect beyond January 23, 2001. Therefore, in accordance with section 202(d)2 of the National Emergencies Act (50 U.S.C. 1622(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
January 19, 2001.

[FR Doc. 01–
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- Meetings, correspondence, and public calendars; published 1-22-01

Food additives:
- Adjuvants, production aids, and sanitizers—
  - Manganese ammonium pyrophosphate (C.I. Pigment Violet 16); published 1-22-01

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Public and Indian housing:
- Public housing agency plans; poverty deconcentration and public housing integration ("One America"); published 12-22-00

INTERIOR DEPARTMENT

Land Management Bureau

Minerals management:
- Mining claims under general mining laws; surface management; published 11-21-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Critical habitat designations—
  - Zapata bladderpod; published 12-22-00

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
- Aliens—
  - Deportation proceedings; relief for certain aliens; published 1-22-01

JUSTICE DEPARTMENT

Privacy Act; implementation; published 1-22-01

PERSONNEL MANAGEMENT OFFICE

Employment:
- District of Columbia Department of Corrections displaced employees; Federal priority consideration program; published 1-22-01

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Pratt & Whitney; published 10-24-00
- Pratt & Whitney; correction; published 11-2-00

TREASURY DEPARTMENT

Balanced Budget Act of 1997; implementation:
- District of Columbia retirement plans; Federal benefit payments; published 12-22-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
- Dogs intended for hunting, breeding, or security purposes; dealer licensing and inspection requirements; comments due by 2-2-01; published 12-4-00

Interstate transportation of animal products (quarantine):
- Brucellosis in cattle—
  - State and area classifications; comments due by 2-2-01; published 12-4-00

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- On-line antimicrobial reprocessing of pre-chill poultry carcasses; performance standards; comments due by 1-30-01; published 12-1-00

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

Interstate ozone transport reduction—
Nitrogen oxides budget trading program; Section 126 petitions; findings of significant contribution and rulemaking; comments due by 1-30-01; published 12-21-00
State operating permits programs—-
Washington; comments due by 2-1-01; published 1-2-01
Washington; comments due by 2-1-01; published 1-2-01
Hazardous waste program authorizations:
Florida; comments due by 2-1-01; published 1-2-01
Louisiana; comments due by 2-1-01; published 1-2-01
Oklahoma; comments due by 2-1-01; published 1-2-01
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 1-30-01; published 12-1-00
Toxic chemical release reporting; community-right-to-know—
Diisononyl phthalate category; comments due by 2-2-01; published 11-21-00

FEDERAL COMMUNICATIONS COMMISSION

Radio and television broadcasting:
Personal attack and political editorial rules; repeal or modification; comments due by 1-31-01; published 10-11-00
Radio stations; table of assignments:
North Carolina and Virginia; comments due by 1-29-01; published 12-19-00

FEDERAL DEPOSIT INSURANCE CORPORATION

Non-complex institutions; simplified capital framework; comments due by 2-1-01; published 11-3-00

FEDERAL RESERVE SYSTEM

Bank holding companies and change in bank control (Regulation Y):
Financial subsidiaries; comments due by 2-2-01; published 1-3-01
Non-complex institutions; simplified capital framework; comments due by 2-1-01; published 11-3-00

FEDERAL TRADE COMMISSION

Fair Credit Reporting Act:
Information sharing with affiliates; interpretations; comments due by 1-31-01; published 12-22-00
Textile Fiber Products Identification Act:
Synterra; new generic fiber name and definition; comments due by 1-29-01; published 11-17-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:
Inpatient rehabilitation facilities; prospectiive payment system; comments due by 2-1-01; published 12-27-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Protection of research misconduct whistleblowers; Public Health Service standards; comments due by 1-29-01; published 11-28-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Tidewater goby; northern populations; comments due by 2-2-01; published 1-3-01

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
West Virginia; comments due by 2-2-01; published 1-3-01

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:
Deportation proceedings; relief for certain aliens; comments due by 1-29-01; published 11-30-00

JUSTICE DEPARTMENT

Parole Commission

Federal prisoners; paroling and releasing, etc.:
District of Columbia Code—
Supervision of released prisoners serving terms of supervised release; comments due by 1-30-01; published 11-24-00

TRANSPORTATION DEPARTMENT

Coast Guard

Pollution, etc.:
Marine casualties; reporting requirements; comments due by 1-31-01; published 11-2-00
Ports and waterways safety:
Gulf of Mexico; shipping safety fairways and anchorage areas; comments due by 1-29-01; published 12-28-00

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Aircraft:
Life-limited aircraft parts; safe disposition; comments due by 1-30-01; published 10-2-00
Airworthiness directives:
Airbus; comments due by 1-29-01; published 12-28-00
Boeing; comments due by 1-29-01; published 11-28-00
Bombardier; comments due by 1-30-01; published 1-5-01
Cessna Aircraft Co.; comments due by 2-2-01; published 12-29-00
DG Flugzeugbau GmbH; comments due by 2-1-01; published 12-27-00
Dornier; comments due by 2-1-01; published 1-2-01
Eurocopter France; comments due by 1-30-01; published 12-1-00
McDonnell Douglas; comments due by 1-29-01; published 11-28-00
PIAGGIO AERO INDUSTRIES S.p.A.; comments due by 2-3-01; published 1-2-01
Airworthiness standards:
Special conditions—
Dessault Aviation Mystere-Falcon 50 airplanes; comments due by 2-2-01; published 1-3-01
Restricted areas; comments due by 2-1-01; published 12-18-00

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Importation of vehicles and equipment subject to Federal safety, bumper, and theft prevention standards:
Vehicles originally manufactured for sale in Canada; importation expedited; comments due by 2-1-01; published 1-2-01
Motor vehicle safety standards:
Tire labeling improvement to assist in identifying tires that are being recalled; comments due by 1-30-01; published 12-1-00

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials transportation:
Registration fees; temporary reduction; comments due by 2-2-01; published 12-7-00

TREASURY DEPARTMENT

Comptroller of the Currency

Non-complex institutions; simplified capital framework; comments due by 2-1-01; published 11-3-00

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:
Subsidiary corporations; entity classification, elective changes (check the box regulations); comments due by 2-2-01; published 1-17-01

TREASURY DEPARTMENT

Financial subsidiaries; comments due by 2-2-01; published 1-3-01

TREASURY DEPARTMENT

Thrift Supervision Office

Non-complex institutions; simplified capital framework; comments due by 2-1-01; published 11-3-00

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the 106th Congress, Second Session has been completed and will resume when bills are enacted into public law during the next session of Congress.

A cumulative List of Public Laws was published in Part II of the **Federal Register** on January 16, 2001.

Public Laws Electronic Notification Service (PENS)

Note: PENS will resume service when bills are enacted into law during the next session of Congress.

This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–3)	6.50	Apr. 1, 2000
3 (1997 Compilation and Parts 100 and 101)	(869–042–00002–1)	22.00	[1] Jan. 1, 2000
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
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27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–042–00010–2)	54.00	Jan. 1, 2000
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8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
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10 Parts:			
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11	(869–042–00029–3)	23.00	Jan. 1, 2000
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§§ 1.501–1.640	(869–042–00083–8)	32.00	Apr. 1, 2000
§§ 1.641–1.850	(869–042–00084–6)	41.00	Apr. 1, 2000
§§ 1.851–1.907	(869–042–00085–4)	43.00	Apr. 1, 2000
§§ 1.908–1.1000	(869–042–00086–2)	41.00	Apr. 1, 2000
§§ 1.1001–1.1400	(869–042–00087–1)	45.00	Apr. 1, 2000
§§ 1.1401–End	(869–042–00088–9)	66.00	Apr. 1, 2000
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500–599	(869–042–00094–3)	12.00	Apr. 1, 2000
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43-end	(869-042-00099-4)	36.00	July 1, 2000
29 Parts:			
0–99	(869–042–00100–1)	33.00	July 1, 2000
100–499	(869–042–00101–0)	14.00	July 1, 2000
500–899	(869–042–00102–8)	47.00	July 1, 2000
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400–629	(869–042–00116–8)	35.00	July 1, 2000
630–699	(869–042–00117–6)	25.00	July 1, 2000
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40 Parts:			
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52 (52.01–52.1018)	(869–042–00136–2)	36.00	July 1, 2000
52 (52.1019–End)	(869–042–00137–1)	44.00	July 1, 2000
53–59	(869–042–00138–9)	21.00	July 1, 2000
60	(869–042–00139–7)	66.00	July 1, 2000
61–62	(869–042–00140–1)	23.00	July 1, 2000
63 (63.1–63.1119)	(869–042–00141–9)	66.00	July 1, 2000
63 (63.1200–End)	(869–042–00142–7)	49.00	July 1, 2000
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72–80	(869–042–00144–3)	47.00	July 1, 2000
81–85	(869–042–00145–1)	36.00	July 1, 2000
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400–424	(869–042–00154–1)	37.00	July 1, 2000
425–699	(869–042–00155–9)	48.00	July 1, 2000
700–789	(869–042–00156–7)	46.00	July 1, 2000
790–End	(869–042–00157–5)	23.00	[6]July 1, 2000
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1–100	(869–042–00158–3)	15.00	July 1, 2000
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*400–429	(869–042–00163–0)	55.00	Oct. 1, 2000
*430–End	(869–042–00164–8)	57.00	Oct. 1, 2000
43 Parts:			
1–999	(869–042–00165–6)	45.00	Oct. 1, 2000
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
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45 Parts:			
1–199	(869–042–00168–1)	50.00	Oct. 1, 2000
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–042–00170–2)	45.00	Oct. 1, 2000
1200–End	(869–038–00171–1)	54.00	Oct. 1, 2000
46 Parts:			
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70–89	(869–038–00174–5)	13.00	Oct. 1, 2000
90–139	(869–042–00175–3)	41.00	Oct. 1, 2000
140–155	(869–038–00176–1)	23.00	Oct. 1, 2000
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–8)	42.00	Oct. 1, 2000
200–499	(869–038–00179–6)	36.00	Oct. 1, 2000
500–End	(869–042–00180–0)	23.00	Oct. 1, 2000
47 Parts:			
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20–39	(869–042–00182–6)	41.00	Oct. 1, 2000
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
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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 January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

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